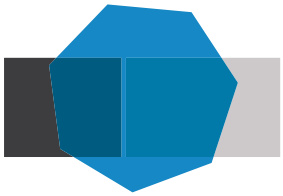

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DIALOGUE PROCESS

2014 IN RETROSPECT

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VOLUME 3

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2014 IN RETROSPECT

The Internet & Jurisdiction Project facilitates an evidence-based global multi-stakeholder dialogue process. To enable cooperation between stakeholders to develop a transnational due process framework for the Internet, it informs its participants about emerging trends and high-level patterns.

The Internet & Jurisdiction Project detected, curated and categorized over 300 cases around the world in a dedicated database between January and December 2014. They show the tension between the cross-border nature of the Internet with its transnational online spaces and the patchwork of geographically defined national jurisdictions.

The Internet & Jurisdiction Observatory supports the Internet & Jurisdiction Project team in keeping track of the latest trends around the globe. This interdisciplinary network of selected international experts crowd-ranks every month all collected cases in the Internet & Jurisdiction database via a progressive filtering process. The 20 most important cases are showcased in the monthly Internet & Jurisdiction Project newsletter Retrospect with concise summaries and links to relevant background information.

The case collection "2014 in Retrospect" is a compilation of 240 selected cases. It provides a review of crucial dynamics to identify emerging norms, stimulate discussions and trigger research.

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SYNTHESIS
REGULAR REPORTS ON LATEST TRENDS AND INSIGHTS

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ABOUT

The Internet & Jurisdiction Project facilitates a global multi-stakeholder dialogue process to address the tension between the cross-border nature of the Internet and geographically defined national jurisdictions. It provides a neutral platform for states, business, civil society and international organisations to discuss the elaboration of a transnational due process framework to handle the digital coexistence of diverse national laws in shared cross-border online spaces. Since its launch in January 2012, the Internet & Jurisdiction Project has involved more than 80 entities in its dialogue process.

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30 DIFFERENT INSTITUTIONS IN
16 COUNTRIES
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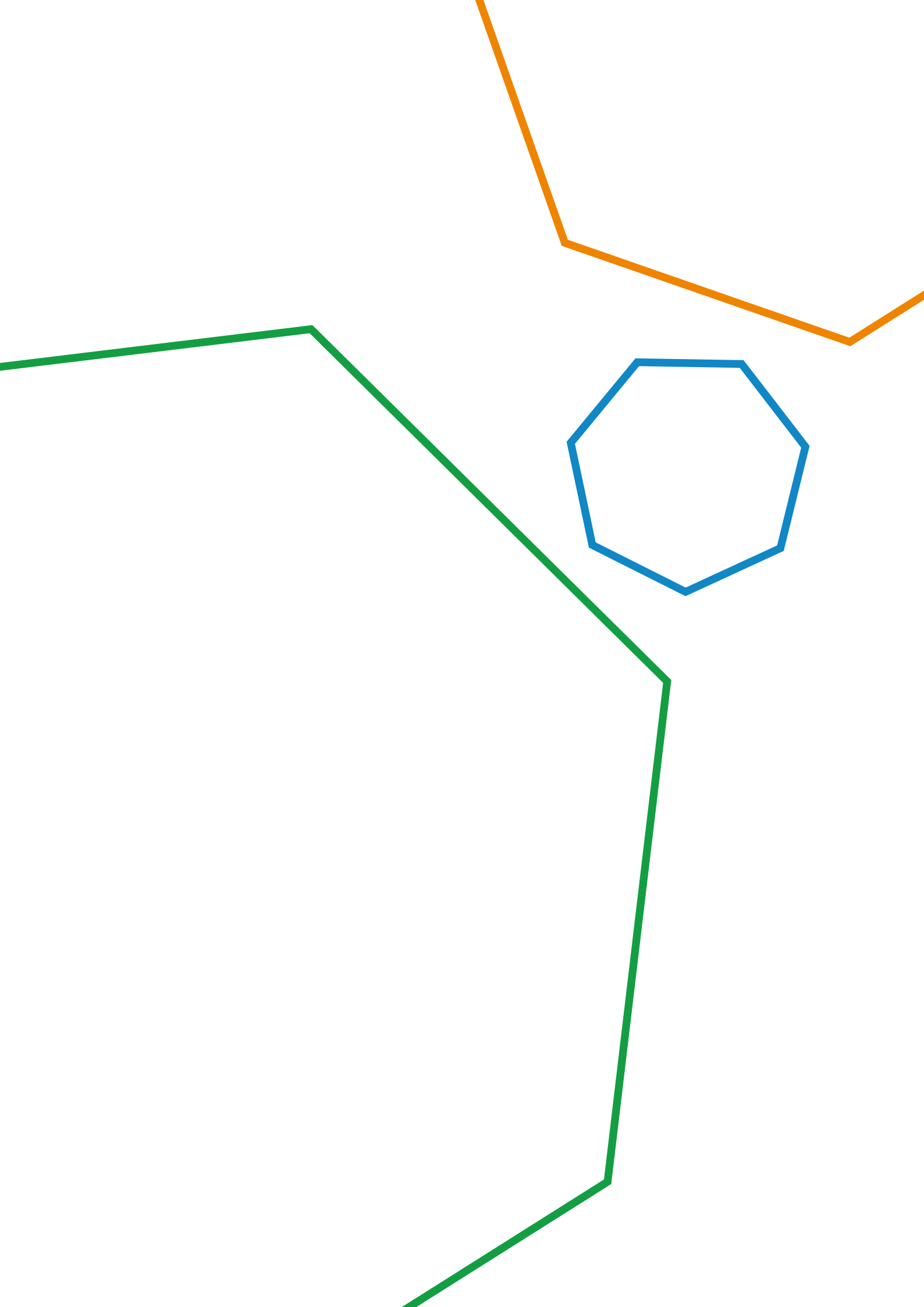

CONTENT

JANUARY

1. MICROSOFT THINKS ABOUT LETTING USERS STORE CLOUD DATA IN THEIR JURISDICTION OF CHOICE

Microsoft[1] presented on January 22, 2014 the idea to offer users to choose the location of the servers on which their data is stored in the cloud: "People should have the ability to know whether their data are being subjected to the laws and access of governments in some other country and should have the ability to make an informed choice of where their data resides" said Microsoft's General Counsel Brad Smith. The idea should restore trust in clouds and is a response to the Snowden revelations, which demonstrated that the physical location of servers of cross-border online platform matters. In the meantime, states like Brazil[2] are pushing for data sovereignty provisions as a response. No concrete plans by Microsoft were announced.

Read further:
Reuters: Microsoft lawyer suggests non-U.S. data storage for overseas users: FT[3]
Economist: The Snowden effect[4]
Verge: Microsoft offers overseas data storage in response to NSA concerns[5]

2. RUSSIAN DUMA COULD OBLIGE DOMESTIC AND FOREIGN INTERMEDIARIES TO REPORT USER ACTIVITIES

As part of a new package of legislative proposals discussed[6] in the Russian Duma to update existing anti-terrorism laws, two bills are proposed that would stipulate new requirements for Internet intermediaries operating in the Russian jurisdiction. The Legislative initiative 428884-6[7] targets individuals or legal entities, which enable the communication between users or the dissemination of information. The bill would oblige operators that are either incorporated in the Russian jurisdiction or that are accessible by users located in the Russian jurisdiction to "store all information about the arrival, transmission, delivery, and processing of voice data, written text, images, sounds, or other kinds of action" on their platforms. Moreover, domestic and foreign website operators would have to inform Russian security services the moment users in Russia start using their sites and every time information is exchanged. The Legislative initiative 428896-6[8] bans the use of international payment intermediaries in the Russian jurisdiction to limit anonymous financial transactions on the Internet.

Read further:
Global Voices: Russia's Parliament prepares new "anti-terrorist" laws for Internet[9]
The Moscow Times: Duma considers anti-terrorism bill for online payments[10]
RIA Novosti: Russia to tighten "anti-terrorism" Internet rules[11]

3. BITCLOUD DEVELOPERS PLAN TO CREATE A NEW, DECENTRALIZED INTERNET

A team of developers announced[12] plans for a peer-to-peer network that would work without centralized servers. Similar to the TOR network or the mining principle behind the virtual Bitcoin currency, individual computers would serve as nodes that would route network traffic in a decentralized and encrypted way without ISPs: "We want to replace YouTube, Dropbox, Facebook, Spotify, ISPs, and more with decentralised apps based on proof of bandwidth", announced the initiators, who are looking for a means to realize the plans of "a new Internet" based on "distributed autonomous corporation". Future applications[13] could be apps like "WeTube", decentralized personal cloud storage, and decentralized web hosting. The infrastructure would be financed through micro-payments in relation to the traffic managed by individual nodes. A Scottish company claims to have already developed a similar network called MaidSafe.[14]

Read further:
Bitcloud: White Paper[15]
BoingBoing: Bitcloud: Bitcoin-like "distributed autonomous corporations" that replace Youtube, Facebook, etc[16]
Wired: Bitcloud wants to replace Internet[17]

4. NEW AMENDMENTS ALLOW CONTENT BLOCKS FOR PRIVACY VIOLATIONS IN TURKISH JURISDICTION

Controversial amendments to the Turkish Law No 5651 proposed[18] by the Ministry for Family and Social Policy were adopted on January 16, 2014. Turkish authorities can now order ISPs to block[19] entire websites or individuals URLs without a court order if the content is found to violate personal rights and privacy. Previously, the Law No 5651 limited blocking orders to specific types of illegal content including child pornography, obscene materials, gambling-related content or encouragement of suicide. Further, the new amendments require web hosts to store user data such as IP addresses and activity logs for two years. The amendments have triggered calls[20] for public protests in Turkey.

Read further:
Deutsche Welle: Erdogan pushing Internet censorship forward[21]
Huffington Post: Where is controversial Internet censorship heading in Turkey?[22]
Washington Post: Turkey debates new law to control web users[23]

5. GOOGLE ORDERED TO BLOCK MOSLEY ORGY PICTURES IN GERMAN JURISDICTION

On January 24, 2014 the Hamburg Regional Court ordered[24] the US-based Google Inc. to block six images from Google's German website, Google.de, which show former Formula 1 president Max Mosley in an orgy. The pictures, which were initially published by a British tabloid in 2008, were deemed to violate Mosley's privacy. Google is obliged to prevent the display of the pictures in its search results, as the company is found to be "responsible as a distributor of the images"[25]. The company announced its intent to appeal the decision, claiming that the decision violates EU law and would require intermediaries to monitor user-generated content. A Paris court previously ordered Google to block Mosley's images in the French jurisdiction[26] in November 2013. Google already filters content for copyright infringements and child pornography on services such as YouTube.

Read further:
Reuters: German court orders Google to block Max Mosley sex pictures[27]
PC World: German court orders Google to block Max Mosley sex party pics[28]
Wall Street Journal: Google ordered to remove private images[29]

6. PIRATE BAY TO DEVELOP NETWORK WITHOUT DOMAIN NAMES, SERVER FARMS

After multiple incidents of domain seizures and blocks in various jurisdictions, the operators of The Pirate Bay are planning[30] to develop a new network to circumvent the enforcement of national copyright laws. In detail, the developers plan to build a decentralized peer-to-peer hosted portal operating under an alternative DNS: "It's basically a browser-like app that uses webkit to render pages, BitTorrent to download the content while storing everything locally", says an insider.

7. CHINESE USERS NEED TO REGISTER REAL NAMES TO UPLOAD VIDEOS IN CHINESE JURISDICTION

The Chinese State Administration of Press, Publication, Radio, Film and Television announced a new rule[31] that obliges Chinese Internet users to register their real names prior to uploading videos to online platforms based in the Chinese jurisdiction. The rule is intended to "prevent vulgar content, base art forms, exaggerated violence and sexual content in Internet videos having a negative effect on society".

8. GOOGLE APPEALS PRIVACY FINE IN FRENCH JURISDICTION

On January 3, 2014 the French data protection authority the French National Commission on Computing and Liberty CNIL fined[32] Google for breaching French privacy laws with changes Google made to its unified March 2012 Terms of Service. The CNIL ordered the company to pay 150.000 euro and to display the order for 48 hours on Google.fr . Google appealed[33] the ruling at the Conseil d'Etat, France's supreme court for administrative matters.

9. SNOWDEN REVELATIONS: BRITISH SPIES CAN MONITOR YOUTUBE AND FACEBOOK USE

NBC News revealed[34] that according to documents taken by Edward Snowden from the NSA, the British government has the capabilities to monitor in real time activities of users on cross-border online platforms incorporated in foreign jurisdictions, such as Google's YouTube or Facebook. The data is taken from the physical traffic that is routed through British jurisdiction.

10. GOOGLE FINED IN SOUTH KOREAN JURISDICTION OVER STREET VIEW

The Korean telecommunications regulator Korea Communications Commission (KKC) fined[35] Google Inc. on January 28, 2014 for its gathering of personal data for its Street View service in the Korean jurisdiction. The fine of ca. 200.000 USD is "the first of its kind imposed on a global company that violated the private information protection laws" in Korea.

11. US COURT: IP ADDRESSES ALONE CANNOT PROVE COPYRIGHT VIOLATIONS

In a case involving the filesharing of the movie Elf-Man, a US District Judge in the state of Washington came to the conclusion[36] that "simply identifying the account holder associated with an IP address tells us very little about who actually downloaded 'Elf-Man' using that IP address" and that "it is also possible that a family member, guest, or freeloader engaged in the infringing conduct". A motion to dismiss[37] the case filed by the four defendants was granted.

12. CANADIAN DPA: GOOGLE ADSENSE VIOLATES NATIONAL PRIVACY LAWS

On January 15, 2014, the Office of the Privacy Commissioner of Canada published[38] the results of an investigation into Google AdSense. Google Inc. was found to have violated[39] Canada's Personal Information Protection and Electronic Documents Act through targeted health-related advertisement offered by AdSense. Google agreed to resolve[40] the issue by June 2014.

13. SPANISH COURT ORDERS ISP TO DISCONNECT COPYRIGHT INFRINGER

For the first time, a Spanish court ordered[41] a local ISP to disconnect "immediately and permanently" a customer, who shared illegally 5.100 copyright-protected music tracks, from the Internet. The decision of the Commercial Court 6 of the Provincial Court of Barcelona overturns an earlier decision of a lower court that came to the conclusion that the filesharer did not infringe copyrights.

14. COURT REVOKES ISP BLOCKS OF THE PIRATE BAY IN DUTCH JURISDICTION

The torrent library The Pirate Bay is again accessible for Internet users in the Dutch jurisdiction. The Court of The Hague ruled[42] in favor of the two ISPs XS4ALL and Ziggo, which appealed the 2010 order to block The Pirate Bay. According to the verdict, the ISP blocks were found to be disproportionate and not efficient, and thus impacted on the freedom of ISPs to do business.

15. UK HIGH COURT ASSUMES JURISDICTION IN GOOGLE'S SAFARI TRACKING CASE

On January 16, 2014 the UK High Court decided[43] that Google Inc. can be sued in the British jurisdiction by a group of more than 100 British citizens for privacy violation through the tracking of their online behavior through Apple's Safari browser. Google is accused of having bypassed security settings in the browser to install advertisement cookies. Google had argued that the forum for the lawsuit should be California, where the company is incorporated.

16. VERIZON PUBLISHES FIRST ISP TRANSPARENCY REPORT

The US ISP Verizon published a transparency report[44] on January 22, 2014. According to ArsTechnica, Verizon is the first major ISP to provide statistics on received requests. The report shows[45] that Verizon received 321.000 requests in 2013 from US law enforcement agencies. Verizon received 5.392 requests for user data in other jurisdiction in which it operates, such as Germany, France and the UK. The ISP does not react[46] to direct requests from third countries and demands requesters to go through a Mutual Legal Assistance Treaty (MLAT) procedure, if one is available.

17. PORN FILTERS: LEGITIMATE WEBSITES BLOCKED IN UK JURISDICTION

The default porn filter in the UK jurisdiction renders[47] some file-sharing sites with legal purposes inaccessible. It is reported that the ISP Sky's filter "Broadband Shield" blocks, for example, download portals that host Linux software or the news portal Torrentfreak. The filter is intended to block children's access to online porn in the UK.

18. GAMBLING: UK ISPS REFUSE TO DISPLAY WARNINGS FOR UNLICENSED WEBSITES

A British regulator called the Gambling Commission asked[48] ISPs based in the UK jurisdiction to show customers warnings if they access unlicensed gambling websites that are often incorporated in foreign jurisdictions. British ISPs refused to comply and demanded that the legislator or a court should decide on such measures. The British government has already announced plans in November 2013 to oblige[49] ISPs to block "extremist" content.

19. GLITCH OR HACK? CHINESE INTERNET USERS REDIRECTED TO US-BASED WEBSITE

Chinese Internet users were redirected[50] for several hours on January 21, 2014 to the website of the US-based censorship circumvention company Dynamic Internet Technology. While official Chinese sources say the redirection was the result of a cyberattack, experts believe[51] it was a technical glitch in the DNS resolution on China's root servers caused by the national DNS blocking system.

20. GOOGLE PLANS TO USE ENCRYPTION TO SERVE USERS IN CHINESE JURISDICTION

Google's CEO Eric Schmidt announced[52] that the company plans to use encryption to enter into markets with strict national content laws, such as in the Chinese jurisdiction. Since 2010, Google's search website google.cn redirects queries to the Hong Kong-based, unfiltered search site google.com.hk. As a coincidence, only days after Schmidt revealed the plans it was reported[53] that searches on google.cn were possible again in China on January 29, 2014 for several hours.

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www.internetjurisdiction.net/observatory/retrospect/2014-january/

FEBRUARY

1. GERMAN CHANCELLOR PROPOSES "EUROPEAN COMMUNICATION NETWORK" TO AVOID US TRANSIT

The German chancellor Merkel proposed during her weekly podcast on February 16, 2014 the creation of a "European communication network" to avoid that emails and other communication data are routed through the US due to the distributed nature of the Internet's technical architecture. Merkel announced to talk with French President Hollande in Paris on February 19, 2014 "about European providers that offer security for our citizens, so that one shouldn't have to send emails and other information across the Atlantic. Rather, one could build up a communication network inside Europe." The Elysée confirmed that the two governments discussed the matter in relation to NSA surveillance and said it was in line with Merkel's proposal. Although France and Germany agreed to cooperate to develop data storage capacities and communications infrastructure in Europe, an official report of the bilateral meeting did not mention[1] the idea of a "European communication network".

Read further:
Reuters: Merkel, Hollande to discuss European communication network avoiding U.S.[2]
BBC: Data protection: Angela Merkel proposes Europe network[3]
Gigaom: After US squashes no-spy hopes, European leaders discuss ways to protect citizens' data[4]

2. EUROPEAN COMMISSION TO REVIEW TENSION BETWEEN AN INTERNATIONAL INTERNET AND NATIONAL JURISDICTION

On February 11, 2014 the European Commission published its Communication on Internet Policy and Governance[5]. The position paper outlines Europe's Internet policy priorities and offers a strategic outlook. Next to highlighting a commitment to the multi-stakeholder approach, the establishment of "a coherent set of global Internet governance principles" and the "globalization of ICANN and in particular the IANA function", the Communication highlights the risks of fragmentation of the Internet due to the proliferation of conflicts between heterogeneous national laws in shared cross-border online spaces. The European Commission stresses that "not one single mechanism" can address the different types of "tensions between an international internet and national jurisdictions," and announces its intent to engage with stakeholders to "facilitate issue-based multi-stakeholder dialogue and decision-making across boundaries."

Read further:
Register: EU hunts down online cross-border lawbook bureaucra-snaggles[6]
Internet Policy Review: Cooperation needed to avoid fragmentation of the net, says European Commission[7]
European Commission Press Release: Commission to pursue role as honest broker in future global negotiations on Internet Governance[8]

3. RUSSIAN COURT ORDERS TERMINATION OF .COM DOMAIN REGISTERED IN US JURISDICTION

For the first time, a Russian court has ordered[9] the termination of a domain under the new 2013 Russian anti-piracy legislation. The case that was handled by the Moscow Arbitration Court involved a music-streaming site called TracksFlow, which plays music from third-party websites such as YouTube. It operated without permission of copyright owners, which led a Russian Warner Brothers subsidiary to file a lawsuit. The court decided that the owner of TracksFlow has to pay a 44.300 USD fine. Moreover, the court ordered the "termination" of the domain, registered under the .com TLD through the registrar Name.com in the US jurisdiction. Unless the operator of TrackFlow would voluntarily hand over the domain, it remains unclear how this ruling can be enforced. The data of TracksFlow is stored in Russian territory on servers operated by Selectel. Under Russia's copyright law, both ISPs and operators of servers can be obliged by a court to block a website. TracksFlow's owner will appeal the decision.

Read further:
TorrentFreak: Court orders domain termination of unauthorized music site[10]
Russia beyond the headlines: Russia's SOPA law claims its first site[11]
Complete Music Update: Tracks Flow case could lead to web-blocking in Russia[12]

4. WEBSITES ALLOWED TO LINK TO COPYRIGHT PROTECTED CONTENT, RULES EUROPEAN COURT OF JUSTICE

On February 13, 2014 the European Court of Justice (ECJ) ruled that hyperlinks to copyright protected content on other websites do not constitute a legal breach and do not require a prior permission by the owners: "The owner of a website may, without the authorization of the copyright holders, redirect internet users, via hyperlinks, to protected works available on a freely accessible basis on another site", states the official press release[14] of the court. The case was forwarded from the Swedish jurisdiction. A newspaper claimed that a web company which published links to its content without permission engaged in an "act of communication to the public", which would entail due compensation under EU copyright law. The ECJ judgment followed the reasoning that the linked contend was already freely available, in contrast to content behind a paywall. A different decision by the ECJ could have required[15] website operators to request permission prior to linking to protected content on other sites.

Read further:
TechnoLlama: European court declares that linking does not infringe copyright[16]
Wired: EU court agrees not to break the web[17]
EurActive: European Court of Justice allows free use of hyperlinks[18]

5. GERMAN COURT HOLDS DOMAIN REGISTRAR LIABLE FOR REGISTERED PIRATE SITE

The German Regional Court of Saarbrücken ruled[19] that the German registrar Key-Systems is liable for copyright infringements that occurred on the torrent website H33t. The website was registered under the TLD .com, operated by the registry Verisign in the US, and bought through the German registrar via a Seychelles-based shell company. The court issued an injunction which obliged the registrar to remove H33T.com's DNS entry to stop the infringing distribution of a music album. Prior to the ruling, H33t ignored takedown requests by the registrar Key-Systems. According to the verdict, a registrar can be held liable for actions on registered domains if it is notified about specific allegations and if it is "obvious" that copyrights are infringed. If the registrar re-activates the domain it would face a 250,000 euro fine.

Read further:
TorrentFreak: Domain registrar liable for torrent site infringement, court rules[20]
PC Advisor: German court finds domain registrar liable for torrent site's copyright infringement[21]
TechDirt: Dangerous ruling in Germany makes domain registrar liable for copyright infringement on website it registered[22]

6. GOOGLE HELD LIABLE FOR COPYRIGHT INFRINGEMENT FOR A PARODY VIDEO IN BRAZILIAN JURISDICTION

The Brazilian Superior Tribunal for Justice ruled[23] that Google is liable for hosting a user-generated video on its YouTube platform that parodies a Brazilian commercial. A user altered the video's soundtrack in 2009. Google agreed to take down the video, but other "fan-dubs" went viral. The plaintiffs claimed that Google did not adopt necessary measures to prevent the viral spread of the altered commercial, while Google stated such filters would be technically impossible. Google was ordered to remove the advertisements in question within 24 hours, including similar or related videos with different titles.

7. FRIEND FINDER: FACEBOOK ORDERED TO COMPLY WITH GERMAN DATA PROTECTION LAW

The Higher Court of Berlin confirmed[24] a 2012 judgement[25] which requires Facebook to respect German jurisdiction for its Friend Finder tool. According to the judgment, parts of Facebook's Terms of Service and privacy policy violate German data protection law, since users were insufficiently informed about the tool. The case was filed by a German consumer organization.

8. PLATFORMS IN US JURISDICTION ALLOWED TO PUBLISH DATA ON FISA COURT REQUESTS

Following a deal[26] with the Department of Justice from January 27, 2014, several cross-border online platforms incorporated in the US jurisdiction were allowed to publish[27] data on the secret FISA court requests they received under the NSA PRISM program. Between January and June 2013, the companies provided information on the following numbers of accounts[28]: 30.000-30.999 (Yahoo), 15.000-15.999 (Microsoft), 9.000-9.999 (Google), 5.000-5.999 (Facebook) and 0-249 (LinkedIn).

9. BRAZIL AND EU AGREE ON NEW UNDERSEA CABLE TO CIRCUMVENT US TRANSIT

The construction of a new undersea cable between Fortaleza and Lisbon was announced[29] during the EU-Brazil summit held on February 24, 2014. The cable is intended to diminish the routing of Brazilian online traffic through US jurisdiction to "guarantee the neutrality" of the Internet and avoid surveillance. Currently, the majority of Brazilian traffic to Europe is routed through the US.

10. GOOGLE FORCED TO DISPLAY PRIVACY VIOLATION NOTICE ON FRENCH HOMEPAGE

The French Conseil d'Etat rejected[30] an appeal by Google against an order by the French data protection authority CNIL, which fined Google for privacy violations and demanded the company display a notice about the decision for 48 hours on the homepage www.google.fr . Google claimed the order to post CNIL's notice would damage its reputation. The company displayed the notice from February 8-9, 2014.

11. MEGAUPLOAD'S FORMER DUTCH-AMERICAN HOST SUED FOR COPYRIGHT INFRINGEMENTS IN US JURISDICTION

LeaseWeb, the former hosting company of Megaupload, has been sued[31] in a federal court in the US state of California. A rightsholder claims that by hosting pirated Megaupload pictures and not reacting to DMCA takedown requests, LeaseWeb became liable for copyright infringements. LeaseWeb is incorporated in both the US and Dutch jurisdictions and Megaupload's data was hosted in both countries. The hosting provider states that most pictures in question were stored in the Netherlands and questions the US forum for the lawsuit.

12. YOUTUBE NOT LIABLE FOR HOSTING COPYRIGHT INFRINGING VIDEOS, SPANISH COURT RULES

In an appeal decision, the Spanish court Audiencia Provincial Civil de Madrid ruled[32] that YouTube is not liable for copyright infringements related to videos uploaded on its hosting platform. The court reasoned that Google has no content control over user-generated content. The case involved protected videos that appeared on youtube.es and youtube.com.

13. FIRST INTERNET-SPECIFIC REGULATION IN TURKISH JURISDICTION INCREASES INTERNET CONTROL

On February 18, 2014 the Turkish president approved[33] amendments to the Law 5651, which will increase the government's ability to exercise[34] national jurisdiction over the Internet. Among others, the administrative agency "Presidency of Telecommunications and Communication" will have the power to compel – without a court order[35] – Turkish ISPs to block websites within 4 hours.

14. AUSTRALIAN GOVERNMENT MIGHT INTRODUCE THREE-STRIKES ANTI-PIRACY SCHEME

In a speech about the overhaul of the Australian Copyright Act, Australia's Attorney General announced[36] that "[t]he government will be considering[37] possible mechanisms to provide a 'legal incentive' for an Internet service provider to cooperate with copyright owners in preventing infringement on their systems and networks" whereby the merits of a graduated warning system executed by ISPs will be studied "carefully". Moreover, the government looks at streamlining court procedures to order ISPs to take down websites hosting infringing content.

15. US COURT ORDERS GOOGLE TO REMOVE "INNOCENCE OF MUSLIMS" CLIP OVER COPYRIGHT CLAIM

In 2012, the anti-Islam video "Innocence of Muslims" was uploaded by a US citizen to YouTube and went viral globally, leading to unrest around the world. Google refused to remove the video, due to its Terms of Service and freedom of speech provisions under the First Amendment of the US Constitution. On February 26, 2014 the 9th U.S. Circuit Court of Appeals ordered[38] Google to take down the video from YouTube for a copyright infringement.

16. UK INTELLECTUAL PROPERTY BILL MIGHT COMPEL INTERMEDIARIES TO TACKLE ONLINE PIRACY

An Intellectual Property Bill that is currently being discussed in the British jurisdiction might require online intermediaries to block or filter copyright infringing material on the Internet. The relevant clause states[39] that "[t]he Secretary of State will, within three months of this Act coming into force, report to both Houses of Parliament on proposals that will have the purpose of ensuring technology companies hinder access via the internet to copyright infringing material".

17. FINISH CLOUD PROVIDER WANTS TO OFFER US-BASED SERVERS UNDER FINNISH PRIVACY LAWS

The Infrastructure-as-a-Service provider UpCloud (incorporated in the Finnish jurisdiction) is going to build servers on US territory[40] with a contractual model that is intended to put users effectively under Finnish and EU data protection laws. Under UpCloud's model, access to user data under US law would be hindered by storing relevant personal information (matching data to its owner) in Finnish jurisdiction. Details on UpCloud's announced model are still vague.

18. IRISH HEADQUARTERS: FACEBOOK CAN FORBID PSEUDONYMS FOR GERMAN USERS

The Schleswig-Holstein Administrative Court of Appeals came to the conclusion[41] that Facebook users in the German jurisdiction are subject to Irish and not German data protection laws. Facebook Germany only engages in ad sales and marketing, and is therefore a separate entity from Facebook Ireland, the international branch of Facebook, which is responsible for data processing. Therefore, a previous order by the Office of the Data Protection Commissioner of Schleswig-Holstein to allow pseudonyms on Facebook was repealed.

19. UK HOME OFFICE WANTS TO BLOCK EXTREMIST CONTENT STORED ABROAD AT THE NETWORK LEVEL

The UK Home Office is talking[42] with Internet companies in order to make sure that extremist content that is hosted outside the UK jurisdiction is blocked by national ISPs. Currently, British law enforcement can only order the removal of videos posted[43] on online platforms incorporated in the UK jurisdiction.

20. TWITTER TRANSPARENCY REPORT SHOWS INCREASE IN CROSS-BORDER REQUESTS

A new transparency report released by Twitter on February 6, 2014 shows a rise in requests[44] from foreign jurisdictions. Between July and December, Twitter received, among others, request for user data from Japan (213), Saudi Arabia (110) France (57) and the UK (56) and content takedown requests from France (309), Russia (14), Brazil (12) and India (8). Most takedown requests were not issued by courts.

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FIND ALL LINKS TO THESE ENDNOTES ON OUR WEBSITE:

www.internetjurisdiction.net/observatory/retrospect/2014-february/

MARCH

1. BRAZILIAN CONGRESS APPROVES MARCO CIVIL BILL

On March 25, 2014 the Brazilian Chamber of Deputies approved the Marco Civil bill[1]. Its scope and drafting process attracted international attention: the legislation was drafted in 2009-10 in a crowd-sourced, public process in which nearly 2000 people participated. Moreover, the bill provides a first comprehensive legislative framework for the Internet in the Brazilian jurisdiction and has been compared to an Internet bill of rights. The Marco Civil now needs to be approved[2] by the Federal Senate before being signed by President Dilma Rouseff. After long deliberations in the Congress, a data sovereignty provision introduced following the Snowden revelations was dropped[3] on March 18, 2014. The provision would have obliged Internet platforms serving Brazilian citizens to store personal data on servers in Brazil. The bill now considers that data of Brazilians is under Brazilian jurisdiction, regardless of the location of servers where they are stored. Intermediaries would only be liable for user-generated content if they do not comply with a court order. The bill also establishes net neutrality and data retention rules in the Brazilian jurisdiction.

Read further:
InfoJustice: Brazilian Chamber of Deputies approves Marco Civil bill[4]
Reuters: Brazil to drop local data storage rule in Internet bill[5]
Brazilian Congress: House approves Marco Civil for the Internet[6]

2. US DEPARTMENT OF COMMERCE INTENDS TO GIVE UP CONTROL OVER IANA FUNCTIONS

On March 14, 2014 the US Department of Commerce's National Telecommunications and Information Administration (NTIA) announced[7] its intention to relinquish US oversight over the Internet Assigned Numbers Authority (IANA) functions. Linked to the invention of the Internet in the US jurisdiction, NTIA has contracted ICANN to perform the IANA function, which includes tasks such as the addition of new top-level domain name strings in the root zone database[8]. Under the current arrangement, which expires in September 30, 2015, NTIA validates requests for changes in the root made by ICANN before VeriSign executes changes and updates the root zone file. NTIA appointed ICANN to lead a global multi-stakeholder consultation process[9] to identify a global accountability mechanism for overseeing the IANA functions. The announcement is not linked to the general question of ICANNs internationalization[10] and jurisdiction over the organization that is headquartered[11] in California. US House Republicans have introduced the DOTCOM Act[12] to stop any oversight transition.

Read further:
Computerworld: US government to end formal relationship with ICANN[13]
Gigaom: The US seems ready to give up control of the Internet[14]
Domain Incite: US to give up control over ICANN[15]

3. TWITTER BLOCKED IN TURKISH JURISDICTION AT IP LEVEL

On March 21, 2014 Turkish ISPs started blocking the US-based microblogging service Twitter. After addresses of alternative DNS servers circulated widely in Turkey to circumvent the URL ban, the country extended[16] the Twitter block to the IP address level on March 22, 2014. Even requests to public DNS servers that were used to circumvent the blocks were re-routed[17]. The Twitter block is based upon the request of a public prosecutor and three court orders. Twitter complied with two court orders and removed the content in question, which also violated its global Terms of Service. The company refuses to comply with the third Turkish court order, a takedown request for an account that accused a former minister of corruption and filed a petition[18] with a Turkish court on March 26, 2014. On the same day, the administrative court of Ankara

ordered an injunction. The Turkish High Council for Telecommunication TIB was obliged to restore access to Twitter within 30 days[19] until a full judgment is pronounced.

Read further:
Guardian: Turkey blocks use of Twitter after prime minister attacks social media site[20]
BBC: Court in Turkey moves to suspend ban on Twitter[21]
Techcrunch: Turkey moves to block Twitter at the IP level[22]

4. EUROPEAN PARLIAMENT ADOPTS EU DATA PROTECTION REFORM

On March 12, 2014, the 766 members of the European Parliament passed[23] the proposed EU data protection reform package. It formally adopted the text of the EU General Data Protection Regulation (621 votes in favor) and adopted the Police and Criminal Justice Directive[24] for personal data (371 votes in favor). Under the new package, privacy protections would apply extraterritorially, regardless of the jurisdiction in which European personal data is processed. The two documents will now be discussed[25] by the EU Council of Ministers. The European Parliament also supported a resolution[26] by the Civil Liberties Committee that would veto the Transatlantic Trade and Investment Partnership unless US data protection standards are raised and calls for a suspension of the Safe Harbor framework. On March 26, 2014, the EU and US announced in a joint statement[27] to improve Safe Harbor privacy standards and create "a meaningful and comprehensive data protection umbrella agreement for data exchanges in the field of police and judicial cooperation in criminal matters, including terrorism".

Read further:
Gigaom: Web firms face a strict new set of privacy rules in Europe — here's what to expect[28]
Hunton Privacy Blog: European Parliament adopts draft general data protection regulation[29]
BlawBlaw: The European Parliament's vote on extraterritoriality in data privacy – one step forward, and one step back[30]

5. FREEDOM OF EXPRESSION LAWSUIT AGAINST CHINESE BAIDU DISMISSED IN US JURISDICTION

On March 28, 2014 a US judge dismissed[31] a 2011 lawsuit filed in the district court of Manhattan that accused the Chinese search engine Baidu of suppressing political speech. The group of eight plaintiffs, all writers from New York, were seeking 16 million US dollar in damages for violations of their civil rights. The US judge decided[32] that "[t]he First Amendment protects Baidu's right to advocate for systems of government other than democracy (in China or elsewhere) just as surely as it protects plaintiffs' rights to advocate for democracy". The judge moreover argued that blocking content on search engines on political grounds would constitute "in essence editorial judgments", similar to print publications. The plaintiffs plan to appeal the verdict.

Read further:
New York Times: U.S. Judge Dismisses Lawsuit Against Chinese Search Engine[34]
Reuters: China's Baidu defeats U.S. lawsuit over censored search results[35]
IT World: US judge rules Baidu's censorship is protected as free speech[36]

6. TURKISH REGULATOR BLOCKS YOUTUBE WITHOUT COURT ORDER

On March 27, 2014 the Turkish High Council for Telecommunications TIB blocked[37] access to youtube.com in the Turkish jurisdiction without a court order. It was the first time that the agency used the new powers conferred upon it by amendments[38] to the Law Nr. 5651 that were adopted in February 2014. TIB reacted to a leaked[39] recording of a high-level security meeting on Syria that circulated on YouTube.

7. GOOGLE'S YOUTUBE AND VIACOM SETTLE LAWSUIT IN US JURISDICTION

On March 18, 2014 Google settled[39] a multimillion-dollar copyright lawsuit with Viacom after seven years of litigation in the US. Viacom sued YouTube for 1 billion US dollar in 2007 for hosting 79.000 infringing videos between 2005 and 2008. The settlement was not revealed. The case was considered[40] as a test-bed for the limits of the Safe Harbor protection for intermediaries under the US Digital Millennium Copyright Act.

8. ISPS BLOCKS FOR COPYRIGHT INFRINGEMENTS ARE POSSIBLE, SAYS EUROPEAN COURT OF JUSTICE

The European Court of Justice (ECJ) decided[41] on March 27, 2014 that ISPs can be ordered[42] to block access to websites that contain content that infringes copyright. The case was brought to the ECJ by the Supreme Court of Austria. However, such orders must be proportionate[43] and balance copyright protections with fundamental rights.

9. GOOGLE ENCRYPTS SEARCHES IN CHINESE JURISDICTION

Google rolled out[44] SSL-encrypted search by default for users located in the Chinese jurisdiction in March 2014. The company will progressively establish encrypted search by default worldwide in order to limit the interception of online searches in national jurisdictions.

10. US AND BRITISH PRIVACY AGENCIES SIGN MEMORANDUM OF UNDERSTANDING

The US Federal Trade Commission and the UK Information Commissioner's office signed[45] on March 6, 2014 a Memorandum of Understanding[46] on "Mutual assistance in the enforcement of laws protecting personal information in the private sector". This will increase cooperation between the two agencies for both investigation and enforcement.

11. ECPA REFORM IN US MIGHT END ACCESS TO EMAILS WITHOUT WARRANTS

The US House of Congress is discussing[47] a reform of the 1986 Electronic Communications Privacy Act (ECPA) that regulates how law enforcement can access private data such as emails. The Email Privacy Act[48] is gaining support. Currently, US law enforcement can access personal communication data such as emails if they are stored for more than 180 days without a warrant.

12. FRENCH NGO OPTS FOR PRIORITY FLAGGING INSTEAD OF LAWSUITS AGAINST TWITTER

Since March 2013, the French anti-homophobia NGO SOS Homophobie has operated[49] a Twitter account to flag discriminatory tweets and hashtags with priority. One year later, this partnership with Twitter appears to work well and the NGO has not filed lawsuits against the microblogging website since August 2013, after an anti-gay hashtag[50] became a top trending topic in France.

13. GOOGLE AND YAHOO PUBLISH NEW NUMBERS ON DATA REQUESTS

During the second half of 2013, Google witnessed an increase of requests for user data from different national jurisdictions, while Yahoo observed a decrease compared to the first six months of 2013. New transparency reports show that between July and December 2013, Google[51] received 27,477 requests from 65 different jurisdictions and Yahoo[52] 21,425 requests from 17 jurisdictions.

14. "SPONSORED STORIES" LAWSUIT AGAINST FACEBOOK IN BRAZILIAN JURISDICTION

Accusing Facebook of violating the privacy rights of 76 million Brazilian Facebook users, the Brazilian Institute of Computer Law has filed a 24 million euro lawsuit[53] against Facebook. In 2013 the company settled[54] a similar lawsuit in the US jurisdiction and announced[55] to end domain and open graph sponsored stories on April 9, 2014.

15. US CONGRESS CONSIDERS DMCA TAKEDOWN REGIME REFORM

The Judiciary Committee of the US Congress is considering[56] changes to the US Digital Millennium Act (DMCA). During a hearing on March 13, 2014 copyright holders demanded a reform of the notice and takedown system. They want that platforms that host user generated content employ filtering technologies.

16. FRENCH CONSUMER GROUP SUES GOOGLE, FACEBOOK AND TWITTER FOR TERMS OF SERVICE

Google, Facebook and Twitter have been sued[57] by the French consumer protection group UFC-Que Choisir and have to appear before the High Court of Paris. The group accuses the online platforms of having unclear Terms of Service that do not comply with French law. A further criticism is that the Terms of Service contain hypertext links that link to pages that are not in French.

17. UK COURT ORDERS ISPS TO BLOCK INFRINGING STREAMING WEBSITES

The High Court of London has ordered[58] six British ISPs to block access to four websites that allow the streaming of copyright protected movies on their platforms or through links to third-party websites.

18. TERMS OF SERVICE: FACEBOOK RESTRICTS GUN SALES ON ITS PLATFORM

Facebook announced on March 5, 2014 new policies[59] that will restrict the sale of guns through its platform. In detail, the platform "will not permit[60] people to post offers to sell regulated items that indicate a willingness to evade or help others evade the [US] law". This new policy will also be enforced on Instagram, which was acquired by Facebook.

19. MACEDONIA BLOCKS FOREIGN GAMBLING SITES IN ITS JURISDICTION

To prevent the outflow of capital, the Macedonian government has announced[61] the blocking of gambling sites incorporated outside of the Macedonian jurisdiction for two years starting in March 2014. The blocking measures[62] will be administered by the Agency for Electronic Communications and the Ministry for Information Society.

20. APPLE BANS SALE OF BOOK WITH NUDE COVER IN FRANCE

Apple has decided, based on its Terms of Service, not to sell[63] copies of a French novel distributed by a French publisher in France because it features a nude woman on the cover.

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APRIL

1. NETMUNDIAL MULTI-STAKEHOLDER STATEMENT STRESSES "JURISDICTION ISSUES"

The topic of jurisdictional issues and how they relate to Internet governance is highlighted in the Roadmap set forth by the "Global Multistakeholder Meeting on the Future of Internet Governance", which took place on April 23-24, 2014 in Brazil. The NETmundial Roadmap[1] outlines steps for the future evolution of Internet Governance and its governance frameworks. The need to address challenges related to jurisdiction and Internet governance was stressed next to issue areas such as net neutrality or benchmarks for Internet governance principles. On this occasion, the Internet & Jurisdiction Project released the contribution "Jurisdiction and Internet Governance: Elements for a Roadmap"[2] that proposes concrete next steps to facilitate collaboration between all stakeholders to develop an interoperability framework that fosters due process and allows the coexistence of diverse national laws and norms in these shared cross-border online spaces.

Read further:
The Wall Street Journal: Brazil Internet Conference Ends Divided on Key Issues[3]
Frankfurter Allgemeine Zeitung: The daily fight for Net freedom[4]
Internet Policy Review: World Internet cup in Brazil – a review[5]

2. MARCO CIVIL PUTS BRAZILIAN DATA STORED ABROAD UNDER BRAZILIAN JURISDICTION

On April 22, 2014, the night before the global NETmundial conference hosted in Sao Paulo began, the Brazilian Congress unanimously adopted the Marco Civil framework[6]. It was signed by the President Rousseff at the opening ceremony of NETmundial. A controversial provision that would have potentially obliged global Internet companies serving Brazilian customers to establish local data centers inside the country was dropped. However, under the adopted law, Brazilian data is considered to be subject to Brazilian jurisdiction regardless of physical location of the data centers it is stored in. In detail, Article 11 of Marco Civil states that "[i]n any operation of collection, storage, retention and treating of personal data or communications data by connection providers and internet applications providers where, at least, one of these acts takes place in the national territory, the Brazilian law must be mandatorily respected" and §2 adds that "[t]he established in Art. 11 applies even if the activities are carried out by a legal entity placed abroad, provided that it offers services to the Brazilian public or at least one member of the same economic group is established in Brazil." It remains unclear through which cross-border procedures these provisions will be enacted.

Read further:
Reuters: Brazilian Congress passes Internet bill of rights[7]
CNET: Brazil lays down the law with Internet 'Bill of Rights'[8]
ZDNet: Brazilian Senate approves Internet Bill of Rights[9]

3. US CAN ACCESS DATA OF US SERVICES EVEN ON SERVERS IN FOREIGN JURISDICTIONS

On April 25, 2014 the US Magistrate Judge James Francis in New York decided[10] that the US government can access data of customers of services incorporated in the US jurisdiction regardless of the country in which their data is physically stored. The case involved data stored by Microsoft in their European data center in Ireland requested by an unknown US law enforcement or intelligence agency. It is the first time that a US court pronounces a judgment on this issue. The court argued[11] that requiring US agencies to coordinate with foreign countries via Mutual Legal Assistance Treaties, which "generally remain[…] slow and laborious", to gain access to servers on their territories

would increase the "the burden on the government [...] substantial[ly], and law enforcement efforts would be seriously impeded". "Even when applied to information that is stored in servers abroad, an [U.S. Stored Communications Act] Warrant does not violate the presumption against extraterritorial application of American law" said the judge. The ruling will apply to data stored by email providers, cloud services or social networks on servers in foreign jurisdictions regardless of local privacy laws. Microsoft is appealing the judgment.

Read further:
Register: US judge: Our digital search warrants apply ANYWHERE[12]
Reuters: US judge rules search warrants extend to overseas email accounts[13]
Engadget: Judge rules US search warrants still apply to info stored overseas[14]

4. TWITTER IS ACCESSIBLE, YOUTUBE STILL BLOCKED AFTER COURT ORDERS IN TURKISH JURISDICTION

On April 2, 2014 the Turkish Constitutional Court ruled[15] that the ban of Twitter in the Turkish jurisdiction was violating Article 26 of the Turkish constitution: "Everyone has the right to express and disseminate his thoughts and opinion by speech, in writing or in pictures or through other media, individually or collectively". The ban, which was installed on March 20, 2014 after tweets accusing Prime Minster Erdogan of corruption circulated on the platform, was lifted on April 3, 2014. Prime Minister Erdogan appealed[16] the judgment which lead to the blocks of two specific accounts[17] by Twitter. On April 4, 2014, a lower court in Ankara, citing the Twitter judgment, ruled that the complete blocking of YouTube since March 27, 2014 was violating human rights. Instead, 15 specific accounts related to a leaked secret military conversation were ordered to be blocked. The Turkish Information and Communications Technologies Authority refused[18] however on April 10, 2014 to lift the national block.

Read further:
Hürriyet: Constitutional Court orders authorities to unblock Twitter[19]
New York Times: Turkey lifts Twitter ban after court calls it illegal[20]
CNET: Turkish court orders partial lifting of YouTube ban[21]

5. EU COURT FORCES THE NETHERLANDS TO DECLARE DOWNLOADING OF COPYRIGHTED CONTENT ILLEGAL

On April 10, 2014 the European Court of Justice ruled[22] that the Dutch levy-based model that allowed the unauthorized downloading of copyrighted works for personal purposes in the Dutch jurisdiction violated the EU Copyright Directive. Since 2003, the Netherlands had adopted a system that did not criminalized downloaders of protected content and compensated rightsholders through a levy attached to the purchase of blank storage media like DVDs or USB sticks in the Dutch jurisdiction. The EU court decided that a "private copying levy system, which does not, as regards the calculation of the fair compensation payable to its recipients, distinguish between the lawful or unlawful nature of the source from which a private reproduction has been made, does not respect that fair balance". The Dutch Ministry of Security and Justice immediately implemented the judgment based on civil law, which means that downloaders will not face criminal charges.

Read further:
TechDirt: Dutch immediately ban unauthorized downloads after EU Court Of Justice confirms incompatibility with copyright law[23]
PCWorld: Party's over for the Dutch: pirated downloads now prohibited in the Netherlands[24]
TorrentFreak: The Netherlands must outlaw downloading, EU court rules[25]

6. US STREAMING SERVICE HULU FIGHTS CYBERTRAVEL, BANS VPNS

The US-based media streaming platform Hulu is only accessible to residents in the US. It employs a geo-IP based blocking tool to prevent people from foreign jurisdictions from accessing its content. The service started to block[26] IP address ranges used by major VPN services that allowed many international users to circumvent the IP-based restrictions to watch content by "cybertravelling" through a US-based server.

7. MEXICO DROPS PUBLIC ORDER INTERNET BLOCKING LEGISLATION

The Mexican government considered, as part of a broader telecommunications reform package, to introduce legislation that would have allowed it[28] to "block, inhibit, or eliminate" communications services "at critical moments for public and national security". Concerns about Internet censorship led to public protests against the proposal in Mexico. The Senate decided to exclude Internet and signal blocks from the reform package.

8. US INDUSTRY SUES MEGAUPLOAD FOR COPYRIGHT THEFT

The movie association MPAA[28] and the records label association RIAA[29] have filed two similar lawsuits in the District Court of Virginia in the US against the former Hong Kong-based file hosting platform Megaupload for copyright theft. The plaintiffs argue that the court in Virigina has personal jurisdiction[30] over the former team behind Megaupload, all of which are neither US citizens or residents, because the platform was freely accessible to Virginia residents and because Megaupload stored parts of its data at a hosting company in the US state.

9. FACEBOOK PUBLISHES SECOND TRANSPARENCY REPORT

In its second transparency report[31], Facebook reveals for the first time[32] not only statistics about requests for user data and account information, but also statistics on the number of requests for content takedowns the social network receives from multiple jurisdictions around the world. Most content takedown requests came from India (for 4.765 pieces of content) and Turkey (for 2.014 pieces of content), while most user data requests were received from the US jurisdiction (12.598 requests).

10. 2.500 DOMAINS SUSPENDED FOLLOWING WARNINGS BY LONDON POLICE

The City of London Police Intellectual Property Crime Unit[33] has launched two major campaigns to target websites hosting infringing content, including outside of the British jurisdiction. Both website operators and domain name registrars received warning notes with requests to shutdown sites in question. 2.500 websites linked to the sale of counterfeit goods were already suspended[34] as a result.

11. MEGAUPLOAD SUES HONG KONG GOVERNMENT OVER UNLAWFUL SHUTDOWN

In January 2012, the Hong Kong based Megaupload platform was shutdown by the US and assets of the company frozen in Hong Kong, based on a US restraint order. Megaupload has filed an application in Hong Kong to release the assets. The company argues[35] the restraint order was issued unlawfully since it was not disclosed how the Hong Kong company was served by a US court. The Hong Kong Department of Justice was ordered by the High Court of Hong Kong to file a response on this question by June 2014.

12. INDIAN GOVERNMENT TELLS SUPREME COURT IT IS IMPOSSIBLE TO BAN OBSCENE CONTENT ON INTERNET

Following a Public Interest Litigation in the Indian jurisdiction that seeks to ban pornographic websites on the Internet, the Secretary of the Indian Department of Telecommunications explained[36] to the Indian Supreme Court that it is not possible to remove all obscene material from the Internet. Content can be hosted outside the Indian jurisdiction and be subject to the respective national law. Moreover the Secretary responded that it is impossible to monitor every piece of content before it is accessed in the Indian jurisdiction and that automated filters may block legal content.

13. SEIZURES: CHINESE COMPANY ARGUES US COPYRIGHT DOES NOT APPLY INTERNATIONALLY

A New York federal court has ordered an injunction[37] against the Chinese company DVDFab, which offers a software that can be used to circumvent DVD encryption. This circumvention of digital rights violates the US Digital Millennium Copyright Act. Domains registered under .NET and .COM, assets and social media accounts have been seized in the US jurisdiction. Arguing that "[i]t is well-established that the Copyright Act doesn't apply extra-territorially", the Chinese company has asked the US court to alter the injunction so that it only applies to the US jurisdiction and does not impede the operations of the company in other jurisdictions.

14. CHINESE APP SHOWS CHINESE USERS DELETED SINA WEIBO POSTS

In the Chinese jurisdiction, infringing or unwanted posts on the micro-blogging service Weibo are deleted highly efficiently. A new app[38] for Android smartphones seeks to circumvent these content blocks in the Chinese jurisdiction by displaying the deleted items. The software uses the Amazon Web Services (AWS) S3 could-hosting platform, which the developers believe is sufficiently encrypted and makes it impossible to block individual pieces of content. Therefore, China would be obliged to block AWS entirely in its jurisdiction.

15. RUSSIANS INTERFERE WITH NATIONAL ISP BLOCKING THROUGH LOOPHOLE

Russian Internet activists have developed a way to potentially challenge[39] the ISP blacklist system operated by the Russian regulator Roskomnadzor. By using a network of mirrored versions of blocked websites with code for automatic redirects to legal and official sites, the blocking system in place would automatically also block these linked sites. On March 17, 2014, a popular Russian website was already blocked through this mechanism, which forced the ISP to unblock the mirrored site. By exploiting this redirect loophole, any website could be initially blocked by ISPs in the Russian jurisdiction and Roskomnadzor might be forced to introduce a whitelist to prevent unintended website blocks

16. OVERBLOCKING: ITALIAN COURT REVOKES BLOCKING FOR COPYRIGHT INFRINGEMENT

The Court of Appeals of Rome overturned[40] a court order to block an entire streaming platform called Filmakerz.org for some content that infringes copyrights. In detail, the judges argued that takedown requests should target specific URLs and not entire domains. Italian ISPs were told to unblock the site.

17. US SUPREME COURT TO RULE ON ONLINE "SPEECH CRIME"

The US Supreme Court is expected to rule[41] on when online speech constitutes a "true threat" that is not protected under the First Amendment of the US Constitution and therefore is a criminal offense such as child pornography or obscenity. It would be the first time that the US Supreme Court would pronounce a judgment on this issue in an online context that would define what a verbal or written threat constitutes online.

18. FACEBOOK, GOOGLE ASKED TO REMOVE VIDEO WITH RELIGIOUS HATE SPEECH IN INDIA

A Delhi Court sent notices to Facebook and Google asking them to remove[42] a video that is deemed to be religious hate speech. The platforms have until June 5, 2014 to comply with the judgment. The plaintiff argues that the "acts and omissions of the defendants [Google and Facebook] are promoting communalism in secular India."

19. JAPAN ACCEDES TO APEC CROSS-BORDER PRIVACY RULES SYSTEM

On April 30, 2014, the Joint Oversight Panel of the APEC Cross-Border Privacy Rules ("CPBR") system confirmed that Japan has met the conditions to join the CPBR framework. Mexico and the US have already joined the system, and Canada is also interested in joining. The APEC CBPR system is a "regional, multilateral cross-border data transfer mechanism and enforceable privacy code of conduct developed for businesses by the 21 APEC member economies."[43]

20. TEXAS COURT RULES GODADDY IS NOT RESPONSIBLE FOR HOSTED REVENGE PORN

A court of appeals in Texas overruled[44] a January 2014 judgment by a lower court that held GoDaddy responsible for hosting the website Texxan.com, which displayed so-called "revenge porn". The court decided that, "it is undisputed that GoDaddy acted only as a hosting company and did not create or develop the third party content on the websites". Therefore, it is exempted from liability under Section 230 of the US Communications Decency Act.

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www.internetjurisdiction.net/observatory/retrospect/2014-april/

MAY

1. EUROPEAN COURT OF JUSTICE ORDERS GOOGLE TO ENFORCE A RIGHT TO BE DE-INDEXED

In a landmark ruling, the European Court of Justice decided[1] on May 13, 2014 that users have the right to directly demand[2] Google to stop indexing links to personal information that is "inadequate, irrelevant or no longer relevant, or excessive in relation to the purposes for which they were processed" and related to the user's name. The case started in the Spanish jurisdiction with a request to delete links to 16-years-old newspaper articles mentioning unpaid debts on Google's search engine. The Court applied existing European data protection law online. The ruling is not related to the "right to be forgotten"[3] discussed within the upcoming EU data protection reform. On May 29, 2014 Google made available a specific web form[4] to collect takedown requests to implement the judgement. The company received quickly over 12.000 requests and announced it will evaluate each one on an individual basis internally. It remains unclear on which country-specific pages Google will remove the content and to what extent other search engines operated by Yahoo or Microsoft will be obliged to follow Google's example in the EU jurisdiction.

Read further:
Cambridge Code: Overview of academic articles about the Google/Spain case[5]
New York Times: European Court lets users erase record on web[6]
Wired: What we can salvage from the 'right to be forgotten' ruling[7]

2. GERMANY CONSIDERS ARBITRATION MECHANISMS TO IMPLEMENT THE EU INDEX DELETION GOOGLE JUDGMENT

The German Ministry of the Interior announced plans on May 27, 2014 to create "dispute-settlement mechanisms" for consumers who filed a request to Google for the de-indexing of their personal data, in line with the judgment of the European Court of Justice from May 13, 2014. The German Secretary of State Ole Schröder[8] stressed the importance of preventing that search engines make arbitrary decisions when deleting links to information. The Ministry appears not to plan a single authority or arbitration court or to require mediators to be put under state supervision. The news outlet SearchEngineLand reports[9] that the mechanism would potentially be triggered if requesters were unsatisfied with the determination made by Google and wanted to appeal decisions. It remains unclear how much the procedure would cost or if lawyers would be involved in it.

Read further:
Bloomberg: Germany mulls arbitration for web 'Right to Be Forgotten'[10]
GigaOM: Germany considers "cyber courts" for judging which Google links should be nixed[11]
Financial Times: Google could face 'cyber courts" in Germany over privacy rights (paywall)[12]

3. TURKISH COURT DECLARES YOUTUBE BAN UNCONSTITUTIONAL, TWITTER OPENS TURKISH COMPLAINTS SERVICE

On May 29, 2014 the Constitutional Court of Turkey ruled[13] that the blocking of YouTube in the Turkish jurisdiction since March 27, 2014 violated the freedom of expression provision in Article 26 of the Turkish constitution. Google, the Union of Turkish Bar Associations and a Turkish scholar appealed the blocking. The Turkish administration refused to implement the judgment by a lower court[14] on April 4, 2014 to re-install access to YouTube on Turkish territory after Turkish security-sensitive information was leaked on the platform. On April 2, 2014, the Constitutional Court declared that the ban of the entire Twitter platform for some pieces of infringing content was disproportionate[15] and violated Article 26. Following meetings between Twitter and the government on May 21, 2014, Twitter agreed to open a live customer support service[16] in Turkish to quickly react to takedown requests from the Turkish jurisdiction. "In some cases even a court order will not be required," stated a Turkish official.

Read further:
Hürriyet: Turkey's top court rules YouTube ban violates freedom of speech[17]
Wall Street Journal: Turkey's top court rules YouTube ban is unconstitutional[18]
Twitter: Turkey says Twitter to be sensitive on court orders, to set up live support[19]

4. PAKISTAN SUPREME COURT TO CLARIFY IF YOUTUBE BAN OVER ONE ANTI-ISLAM VIDEO WAS PROPORTIONATE

On September 13, 2012, the Supreme Court of Pakistan ordered to block the entire YouTube platform in the Pakistani jurisdiction for hosting the Innocence of Muslims video. The Pakistani NGO Bytes for All appealed the decision in January 2013, arguing that the judgment was disproportionate. During the 20th hearing of the appeal case at the High Court of Lahore on May 13, the judge agreed with the technical advise by the Ministry of Information Technology and Bytes for All that warning pages could be displayed on YouTube before controversial videos in the Pakistani jurisdiction. This would allow restoring access to YouTube. Following the subsequent order[20] from the High Court, the NGO will now seek clarification from the Supreme Court on the granularity of the blocking order from 2012.

Read further:
The Express Tribune: YouTube ban questioned in Lahore High Court[21]
Bytes for All: 20th Hearing of Internet Freedom Case: Petitioner referred to Supreme Court[22]
Global Voices: Pakistan High Court demands unblocking of YouTube[23]

5. NORWEGIAN CONSUMER COUNCIL FILES COMPLAINT AGAINST APPLE'S ICLOUD TERMS OF SERVICE

On May 14, 2014, the Norwegian Consumer Council, a governmental agency and consumer protection organization, filed[24] a complaint with Norway's Consumer Ombudsman against Apple's iCloud Terms of Service. In the unfair practice complaint, the council accuses Apple of violating Norwegian consumer rights and privacy provisions as well as the EU Unfair Terms in Consumer Contracts Directive. According to a study[25] by the council on Terms of Service of seven cloud computing services, Apple is the only provider that reserves the right to "change the terms at any time, without notice". Norway is not a EU member, but part of the European Economic Area Agreement and implements certain EU laws.

Read further:
EurActive: Norway accuses Apple of breaching EU consumer law[26]
ZDNet: Apple's 'convoluted and unclear' iCloud agreements break Norwegian law, says watchdog[27]
The Whir: Apple iCloud Terms of Service violates Norwegian law[28]

6. TWITTER STARTED USING GEO-IP BASED CONTENT FILTERING IN PAKISTANI JURISDICTION

In Pakistan, Twitter has used its Country Withheld Content Tool, a geo-IP based content filtering mechanism, for the first time[29] in response to five reported requests by the Pakistan Telecommunication Authority regarding blasphemous or unethical content, which the US-based company received between May 5 and May 14, 2014. Twitter used the technology for the first time in October 2012 in Germany[30].

7. ESTONIA PLANS TO OFFER CYBER CITIZENSHIP TO FOREIGNERS

Estonia's chief information officer announced[31] plans to issue digital identification cards to non-Estonian residents. The cyber passport would allow "e-residents" to open bank accounts or start companies without any physical presence on Estonian territory. First cyber passports could be issued by the end of 2014 if the parliament agrees to necessary legislative changes.

8. EU MEMBER STATES ADOPT GUIDELINES ON FREEDOM OF EXPRESSION ONLINE AND OFFLINE

On May 12, 2014, the Council of the EU adopted the EU Human Rights Guidelines on Freedom of Expression Online and Offline[32], which state that "all human rights which exist offline must also be protected online, in particular the right to freedom of opinion and expression". The guidelines have the purpose[33] to "address unjustified restriction on freedom of expression, promote media freedom and provide valuable guidance to EU officials and staff across the globe".

9. IRAN SUMMONS FACEBOOK CEO TO APPEAR IN COURT OVER PRIVACY COMPLAINTS

On May 27, 2014 an Iranian court in the southern province of Fars, which opened a privacy case against Facebook's services WhatsApp and Instagram, summoned[34] the "Zionist director of the company of Facebook, or his official attorney" to appear in court to "defend himself and pay for possible losses". Both services are also ordered to be blocked[35] in the Iranian jurisdiction.

10. CANADIAN POLICE ACCESS SERVERS OF SWEDISH TORRENT SITE THROUGH MLAT REQUEST

The Swedish torrent website Sparvar is hosted by Netelligent Hosting Services in the Canadian jurisdiction, which did not declare torrent sites illegal. Through an MLAT cooperation request, the Royal Canadian Mounted Police nevertheless requested[36] the hosting company to hand over the data of the site that is directed to a Swedish audience, since a criminal investigation is underway in the Swedish jurisdiction.

11. RUSSIAN DRAFT RESOLUTION TO BLOCK WEBSITES IN CASE OF NON-COMPLIANCE WITH DATA REQUESTS

The Russian regulator Roskomnadzor issued a draft resolution[37] that would allow the blocking of websites located in foreign jurisdictions if they fail to provide data on their owners within five days when requested by Russian security services or the police. The provision would replace an initial proposal to require all website operators to provide Russian authorities with full details on their identity.

12. AFTER RACIST TWEETS, SPAIN MIGHT CRACK DOWN ON HATE SPEECH ON SOCIAL NETWORKS

Following a Spanish-Israeli basketball game on May 18, 2014, a wave of anti-Semitic tweets by Spanish users circulated on Twitter. A specific anti-Semitic hashtag became a trending topic. Jewish groups have filed a complaint in Spain against the Twitter users involved. The lawsuit is reminiscent of a similar case in France[38] in 2013. The Spanish Ministries of Justice and Interior are now debating how Spanish law on defamatory, racist or discriminatory speech can be enforced on social media such as Twitter.

13. SINGAPORE TO INTRODUCE ISP BLOCKING AMENDMENT FOR COPYRIGHT INFRINGEMENT

On May 29, 2014, an amendment to Singapore's Copyright Act was introduced[39] in the Parliament. If the bill is passed, courts could order the ISP blocking of websites that infringe copyrights.

14. APPLE PUBLISHES DETAILS ON HOW IT HANDLES USER DATA REQUESTS BY US AUTHORITIES

On May 7, 2014, Apple published the "Legal Process Guidelines – US Law Enforcement"[40] that provide details on how the company handles requests by US authorities for user data of its customers. Apple states[41] that it notifies the user about requests unless a notice would be illegal or represents a danger. Apple further specified[42] what information on which service it can reveal.

15. POLISH REGISTRAR RESTORES TORRENT SITE PREVIOUSLY SUSPENDED BY UK POLICE

On May 26, 2014, the City of London Police Intellectual Property Crime Unit asked a Poland-based registrar to suspend the domain of torrent website torrentz.eu without a court order. The registrar initially complied, but restored[43] the domain name on May 27, 2014, after it found that the British suspension request was unlawful.

16. VIMEO BLOCKED IN INDONESIAN JURISDICTION FOR NUDITY VIDEOS

On May 21, 2014, Indonesian ISPs were ordered[44] to block the video streaming site Vimeo. Indonesia found that Vimeo hosts 15.000 videos that show some form of nudity, which is illegal under the 2008 Anti-Pornography Law. The Ministry of Communication and Information Technology asked Vimeo to introduce stricter content filters in its jurisdiction.

17. RUSSIA PLANS AMENDMENT TO BLOCK "MALICIOUS" PIRATE SITES ENTIRELY

The Russian Ministry of Communications is working on an amendment[45] that would allow the blocking of "malicious sites" that are entirely directed towards copyright infringements. A court order would be required to make piracy sites inaccessible in the Russian jurisdiction. It remains unclear if sites would need to host actual infringing content, or simply link to it to be qualified as "malicious".

18. GERMANY COURT RULES TO PREEMPTIVELY DELETE EROTIC PICTURES TO PREVENT REVENGE PORN

Revenge porn online is a new challenge for courts in various jurisdictions. Now a higher regional court in Germany ruled in a case involving an ex-partner having taken nude pictures with full consent from his former partner, to preemptively delete[46] this material to prevent any potential online diffusion against the will of the plaintiff. The defendant showed no intention to use the material as revenge porn.

19. FRENCH HADOPI PROPOSES NOTICE AND STAYDOWN REGIME

The French anti-piracy agency Hadopi proposed in a recommendation[47] to the French government to develop "operational tools" that would not only be designed to takedown copyright infringing content, but also to guarantee that content stays down for a certain amount of time.

20. IRAN ANNOUNCES TO USE GRANULAR FILTERS, BLOCKS TWO US-BASED PLATFORMS AND WIKI PAGES

On May 16, 2014 the Iranian Communications Minister announced that Iran will develop "smart-filters"[48], which allow the blocking of "depraved and immoral" websites on a granular level. Meanwhile, the US-based platforms Google Sites, Instagram and several Wikipedia pages were blocked[49] in May 2014 in the Iranian jurisdiction.

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JUNE

1. US MAY ALLOW EU CITIZENS TO SEEK JUDICIAL REDRESS IF US AUTHORITIES MISHANDLE THEIR DATA

The EU and the US are since 2011 negotiating the EU-US Data Protection and Privacy Agreement (DPPA) which focuses on police and judicial cooperation. During a Justice and Home Affairs Ministerial Meeting in Greece on June 25, 2014, US Attorney General Eric Holder announced[1] the intention of the Obama administration to introduce a bill in the US jurisdiction through which "EU citizens would have the same right to seek judicial redress for intentional or willful disclosures of protected information, and for refusal to grant access or to rectify any errors in that information, as would a U.S. citizen under the [US] Privacy Act". In return, EU law enforcement authorities would share[2] certain personal data with their US counterparts for crime and terrorism investigations under the DPPA.

Read further:
US Department of Justice: Attorney General Holder pledges support for legislation to provide E.U. Citizens with judicial redress in cases of wrongful disclosure of their personal data transferred to the U.S. for law enforcement purposes[3]
GigaOM: U.S. may extend some privacy rights to Europeans[4]
Reuters: U.S. will allow EU citizens to sue over data privacy[5]

2. HONG KONG DPA WANTS TO EXTEND EUROPEAN DE-INDEX RIGHT ON GOOGLE TO ASIA-PACIFIC REGION

Only six weeks after the May 13, 2014 ruling by the EU Court of Justice (ECJ) that allows EU citizens to de-index certain privacy infringing search results, Google updated its technical infrastructure on June 27, 2014, to start hiding results on its country pages with EU-based ccTLDs. At the same time, on June 27, 2014, the Commissioner of the Data Protection Authority of Hong Kong evoked that Google should not limit the right to be de-indexed to EU citizens. In detail, the issue of wider adoption of the ECJ judgement was on the agenda of the 41st Asia Pacific Privacy Authorities Forum in Seoul, which took place on June 17-18, 2014 and unites 13 privacy authorities. In a blog post, the Hong Kong Privacy Commissioner announced[6] to explore to what extent the ECJ judgement could be implemented in the Hong Kong jurisdiction.

Read further:
Washington Post: Google starts removing search results under Europe's 'Right to be Forgotten'[7]
South China Morning Post: Hong Kong's privacy chief amplifies call for Google to extend 'right to be forgotten'[8]
China Daily Asia: Privacy tsar wants 'right to be forgotten' in HK[9]

3. CANADIAN COURT ORDERS GOOGLE TO REMOVE SEARCH RESULTS WORLDWIDE

On June 13, 2014 the Supreme Court of British Columbia in Canada ordered[10] Google Inc. and Google Canada Cooperation to remove certain websites from its worldwide search databases within 14 days. The temporary injunction concerns a pirated product that is sold on the Internet. Google voluntarily removed certain results from Google.ca prior to the ruling. The Canadian judge argued that contrary to Google's "choice of laws" provision in its Terms of Service that sets California as its legal forum, Canada can assume jurisdiction over the globally available search engine and its country pages: "I note that Google objects to British Columbia retaining jurisdiction because the order sought would require Google to take steps in relation to its websites worldwide. That objection is not resolved by 'going to California'. If the order involves worldwide relief, a California court will be no more appropriate a forum than British Columbia to make such an order". Google announced it will appeal[11] the decision. The court order did not extend the ruling to other search engines, which still display links to the sites in question in Canada.

Read further:
Michael Geist: Global deletion orders? B.C. Court orders Google to remove websites from its worldwide index[12]
TorrentFreak: Court hands google a worldwide site blocking injunction[13]
New York Times: Canadian judge says Google must remove links worldwide[14]

4. TWITTER RESTORES FILTERED CONTENT IN PAKISTAN AFTER SECOND REVIEW OF REQUESTS

On May 18, 2014 Twitter complied for the first time with requests from the Pakistani Telecommunication Authority and geo-IP blocked "blasphemous" or "unethical" content in the Pakistani jurisdiction. On June 17, 2014 Twitter restored[15] access to the pieces of content. Twitter argued it lacked "additional clarifying information from Pakistani authorities" and therefore re-determined the compliance with the official requests. The tweets in question appeared to be anti-Islamic and showed, for example, images that mocked the Prophet Muhammad.

Read further:
Chilling Effects: Twitter restores access to Pakistani notices[16]
CNet: Twitter unblocks 'blasphemous' accounts in Pakistan[17]
TechAdvisor: Twitter unblocks controversial content in Pakistan after review[18]

5. EU COURT WILL REVIEW EU-US SAFE HARBOR AGREEMENT DUE TO IRISH FACEBOOK CASE

The privacy campaign europe-v-facebook filed a case against the Irish Data Protection Commissioner in the Irish jurisdiction, after the agency refused[19] to investigate if Facebook, incorporated in Ireland, has violated EU privacy laws by processing data of EU citizens in the US, where it was intercepted by the NSA. On June 18, 2014, the Irish High Court referred[20] the case to the Court of Justice of the EU to examine if the EU-US Safe Harbor agreement for cross-border data transfers is compatible with the EU Charter of Fundamental Rights. Moreover, the judge said that Facebook users' privacy should be respected under the Irish constitution[21].

Read further:
BBC: Facebook: Irish judge refers internet privacy case to European Court of Justice[22]
EU Observer: EU judgment on Facebook to take over a year[23]
Bloomberg BNA: Irish referral of U.S.-EU Safe Harbor to ECJ may raise issues on all adequacy regime[24]

6. TWITTER ASKED TO BLOCK TWELVE EXTREMIST ACCOUNTS IN RUSSIAN JURISDICTION

The Russian regulator Roskomnadzor asked[25] Twitter's global public policy head during a meeting on June 23, 2014 to block twelve accounts deemed to be "extremist" in the Russian jurisdiction. The head of the regulator stressed in an interview that "it does not matter where the blog has been registered" as long as they are made inaccessible in the Russian jurisdiction. Twitter did not comply[26] with this demand.

7. GOOGLE TO NOTIFY USERS ABOUT DE-INDEXED SEARCH RESULTS IN EU JURISDICTION

Implementing the European Court of Justice de-indexing judgment[27], Google began to notify[28] all users searching for "names" on European country search pages that some results may have been removed. Moreover, Google informs[29] operators of websites, which are removed from European versions of Google Search results, via Google Webmaster Tools. Concerned websites are still searchable in Europe with terms that do not contain specifically blocked names.

8. LINKEDIN FILTERS TIANANMEN POSTS MADE IN CHINESE JURISDICTION WORLDWIDE

The social network LinkedIn is accessible in China and launched a Chinese language version in 2014. Complying with Chinese regulations, LinkedIn blocks[30] posts about the anniversary of the Tiananmen protest that were made within the Chinese jurisdiction for both users residing

in China and global users. It appears[31] that users in Hong Kong's jurisdiction were, by accident[32], also subject to the Chinese content posting restrictions on LinkedIn.

9. ARGENTINEAN SUPREME COURT TO RULE ON MONITORING RESPONSIBILITY OF GOOGLE AND YAHOO SEARCH

In the absence of prescriptive intermediary liability laws in the Argentinean jurisdiction, a decisive case is heard by the Supreme Court. The case involves a model who wants Yahoo and Google to block search results that show pornographic material next to her name or images, and to stop the commercial use of her images in Google Image's thumbnails. The Supreme Court will thus judge[33] if intermediaries are liable for linking to content that either violates their fundamental rights or infringes copyright.

10. LINKING TO PROTECTED CONTENT ON THE WEB DOES NOT INFRINGE COPYRIGHT, RULES EU COURT

On June 5, 2014 the Court of Justice of the EU decided[34] that under Article 5 of the EU Copyright Directive[35], websites that provide links to protected content that is subsequently accessed by users do not infringe copyright. The question was referred to the court by the UK Supreme Court and involved a news monitoring service[36].

11. MICROSOFT OBJECTS US COURT ORDER TO DISCLOSE DATA STORED ON SERVERS IN IRISH JURISDICTION

On June 6, 2014 Microsoft objected[37] the decision by a federal US Court to extend a search warrant for US law enforcement to access data stored on servers by Microsoft in Ireland. Other US companies such as Verizon, Apple and Cisco, AT&T, and EFF submitted amicus briefs to the District Court for the Southern District of New York to support Microsoft's objection against extraterritorial search warrants.

12. FACEBOOK, GOOGLE, TWITTER BLOCKED IN IRAQI JURISDICTION TO HINDER ISIS MOBILIZATION

On June 13, 2014 the Iraqi Ministry of Communications blocked[38] social networks and communication services based in foreign jurisdictions and operating in Iraq. Facebook, Google, YouTube, Skype and Twitter are inaccessible[39]. It remains unclear if the blocks were applied only locally or covered the entire Iraqi jurisdiction. It is believed that the Iraqi government wants to prevent the armed militant organization ISIS to communicate with and mobilize people in Iraq via the Internet.

13. TURKISH GOVERNMENT UNBLOCKS YOUTUBE

On June 3, 2014 the Turkish Telecommunication Authority TIB implemented[40] the judgment by the Constitutional Court and restored access to YouTube in the Turkish jurisdiction after a 67 day block. The block of the entire platform due to one leaked recording that circulated on the service was found to be disproportionate and to violate free speech provisions under the Turkish constitution.

14. BAHAMAS-BASED REGISTRAR SUSPENDS .PM DOMAIN FOR COPYRIGHT VIOLATION

A registrar suspended[41] the domain of a torrent site after it received complaints that the website does not have tools –such as the DCMA mechanism– in place to respond to takedown requests by rightsholders. The case involved a Barbados-based company that operated the torrent link library Bittorrent.pm and bought its domain through the Bahamas-based registrar Internet BS. The cc-TLD .pm belongs to the French oversea territory Saint Pierre and Miquelon and is managed by the French registry AFNIC.

15. STREAMING SITE MOVES DOMAIN FROM BELIZE TO ICELAND'S JURISDICTION TO ESCAPE SUSPENSION

The video streaming site putlocker moved[42] its cc-TLD from Belize's .bz to Iceland's .is following a temporary suspension by NIC.bz. It rests unclear if rightsholders or law enforcement authorities triggered the suspension. The Icelandic registry ISNIC stated that it would only suspend domains with a valid Icelandic court order and not on grounds of determinations by the registry on illicit use of a registered domain.

16. LINKEDIN FACES LAWSUIT OVER ADVERTISEMENT EMAIL MESSAGES IN US JURISDICTION

The professional social network LinkedIn, incorporated in Mountain View, California, is being sued[43] by customers in the US jurisdiction for privacy and reputation violations[44] for "breaking into its users' third-party email accounts, downloading email addresses that appear in the account, and then sending out multiple reminder emails ... advertising LinkedIn to non-members". The plaintiffs seek class-action status for the lawsuit.

17. UK INTELLIGENCE SERVICE INTERCEPTS BRITISH USE OF PLATFORMS LOCATED IN FOREIGN JURISDICTIONS

The UK intelligence service asserts[45] the right to intercept communications between British citizens without a warrant if data is exchanged on platforms located in foreign jurisdictions. This "external communication"[46] can occur on service such as Facebook, Google or web-based email platforms such as Hotmail.

18. FACEBOOK REVEALS LARGEST SEARCH WARRANT REQUEST IN US JURISDICTION

On June 26, 2014 Facebook disclosed[47] details about the largest bulk search warrant it ever received in the US jurisdiction. A New York court ordered the network to reveal data about 381 users of which only 62 were later charged in a case. Facebook wanted to highlight the disproportionate[48] broadness of the search warrant.

19. CONSULTATIONS ON BRAZILIAN MARCO CIVIL IMPLEMENTATION ARE CROWD-SOURCED

The Marco Civil was passed in the Brazilian jurisdiction on April 23, 2014. Similar to the drafting phase of the comprehensive Internet rights bill, the Brazilian government decided to launch online consultations[49] on its implementation. Under the law, data of Brazilians is considered to be under Brazilian jurisdiction regardless of its physical location.

20. TERMS OF SERVICE: FACEBOOK ALLOWS BREASTFEEDING PICTURES

Facebook changed[50] the nudity content policy on its platform and began to allow breastfeeding pictures. In the past, deletions of breastfeeding pictures caused controversies between the platform and users around the world. Facebook now states: "We agree that breastfeeding is natural and beautiful and we're glad to know that it's important for mothers to share their experiences with others on Facebook."

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www.internetjurisdiction.net/observatory/retrospect/2014-june/

JULY

1. EU DPAS MEET WITH GOOGLE, MICROSOFT, YAHOO TO DISCUSS RIGHT TO BE DE-INDEXED

On July 25, 2014 the EU Data Protection Authorities (united in the Article 29 Working Party) met[1] in Brussels with representatives of Google, Microsoft and Yahoo to discuss the modalities of the implementation of the May 2014 landmark ruling[2] by the Court of Justice of the EU that established a right of users to be de-indexed from search engines to protect their privacy. During the meeting, chaired by the French DPA CNIL, the platforms were asked 26 detailed questions[3] on how they apply the ruling. A point of contestation was the fact that Google decided to remove results only on European versions of its search engine, and not on google.com, which remains accessible in the EU jurisdiction. Google published[4] its responses on July 31, 2014. The Article 29 Working Party announced it will draft guidelines that ensure "the consistent handling of complaints by European DPAs" and "frame the action of search engines ensuring the consistent and uniform implementation of the ruling". Reports suggest that these guidelines could be released in September 2014.

Read further:
Reuters: Google under fire from regulators on EU privacy ruling[5]
Article 29 Working Party: European DPAs meet with search engines on "right to be forgotten"[6]
PC World: EU, Google, Microsoft, Yahoo meet on 'right to be forgotten' but questions remain[7]

2. RUSSIA ADOPTS PERSONAL DATA LOCALIZATION LAW

On July 22, 2014, the Russian president Vladimir Putin signed a new law "Bill number 553424-6" that amends existing Russian privacy laws. It will require domestic and foreign websites operating in the Russian jurisdiction and interacting with natural persons to store personal data of Russians locally:[8] "while collecting personal data, including by means of the internet, an operator should provide recording, systematization, storage and update of the Russian citizen's personal data using databases located in the territory of the Russian Federation." The law was passed by the State Duma on July 5, 2014 and will enter into force on September 1, 2016. Websites that will not comply with the new regulation will be blocked at the ISP level by the Russian regulator Roscomnadzor.

Read further:
The Register: Russian law will force citizens' personal data to be stored locally[9]
Russia Today: New Russian law bans citizens' personal data being held on foreign servers[10]
Deutsche Welle: Russia tightens Internet screws with 'server law'[11]

3. MICROSOFT IMPLEMENTS EU RIGHT TO BE DE-INDEXED ON BING

The Court of Justice of the EU "right to be de-indexed" ruling applies not only to Google, but to search engine operators with a "presence" in Europe in general. Microsoft, the operator of Bing, announced[12] already in June 2014 the intention to launch a form on its website to receive requests by users in the European jurisdiction. On July 13, 2014, Microsoft introduced a web form[13] that requires the requester to fill in information about "identity, residence and contact information", the requester's "role in society or your community", the "requested pages to block" and to sign the form electronically. Bing did not yet release statistics on the requests it has received and to what extent they were granted. Yahoo[14] is still working on its mechanism to implement the EU court judgment.

Read further:
Washington Post: Bing joins Google in accepting 'right to be forgotten' requests from European users[15]
PC World: Bing follows Google in offering Europeans the 'right to be forgotten'[16]
BBC: Microsoft's Bing launches 'right to be forgotten' form[17]

4. US JUDGE ORDERS MICROSOFT TO HAND OVER DATA STORED ON SERVERS IN IRISH JURISDICTION

On July 31, 2014, the US District Court for the Southern District of New York upheld[18] a previous December 2013 decision by a magistrate judge to issue a search and seizure warrant and ordered Microsoft to hand over emails of a user which are stored in the Irish jurisdiction. The seizure is connected to a criminal drug trafficking case. Microsoft announced[19] it will appeal the judgment, arguing that US authorities cannot seize data that is stored physically outside the US jurisdiction, since this would amount to an extraterritorial extension of sovereignty. In a brief filed on July 9, 2014, the US government argued[20] that data stored on servers in foreign jurisdictions is subject to US jurisdiction according to the US Stored Communications Act from 1986: "Overseas records must be disclosed domestically when a valid subpoena, order, or warrant compels their production".

Read further:
New York Times: Judge rules that Microsoft must turn over data stored in Ireland[21]
Washington Post: Judge orders Microsoft to turn over data held overseas[22]
ArsTechnica: Obama administration says the world's servers are ours[23]

5. CANADIAN COURT REFUSES GOOGLE'S APPEAL AGAINST GLOBAL DE-INDEXING ORDER

On June 13, 2014, the Supreme Court of British Columbia ordered Google to remove certain search results relating to websites selling goods that violate trade secrets online. The order targeted not only google.ca, but applies globally to Google's country sites. Google appealed the ruling. On July 23, 2014, the Court of Appeal for British Columbia refused[24] the request to stay the enforcement of the injunction, but granted the appeal process. The judge argued[25] that, "the applicant is unable to demonstrate irreparable harm is likely to be incurred pending the hearing of the appeal". Moreover, the court stated that implementing the global de-indexing order would not affect Google's reputation since it "acts in accordance with the rule of law". Google started removing results related to the product called "GW-1000Đ from its US site google.com.

Read further:
Stanford CIS: British Columbia Court of Appeal refuses to stay enforcement in Equustek Solutionvs v. Google[26]
Barry Sookman: Google ordered by BC court to block websites: Equustek Solutions Inc. v. Jack[27]
The Register: Google's Canadian 'memory hole' to continue[28]

6. ITALIAN COURT ORDERS ISPS TO BLOCK MAIL.RU WITHOUT NOTIFICATION

The Tribunal of Rome ordered Italian ISPs to block[29] access to 24 websites[30], including Kim Dotcom's new service MEGA and Mail.ru, the fifth largest website in the Russian jurisdiction. The case was brought up by a small independent Italian producer and involved the unauthorized online diffusion of two movies. According to statements by Mail.ru, Italian law enforcement did not inform[31] the platform about the illegal content before or after the blocking order was announced.

7. GOOGLE REVERSES DECISION TO DE-INDEX RESULTS LINKING TO BRITISH NEWS ARTICLE

Implementing the EU right to be de-indexed judgment, Google reversed[32] on July 3, 2014 the decisions to delete search results linking to an article about a soccer scandal on the website of The Guardian and an investment news story on BBC. As webmasters of their news outlets, both newsrooms were automatically informed of the de-indexing by Google and protested the decisions. It remains unknown who requested the removals of specific search results.

8. BRITISH AND IRISH DPAS EXAMINE FACEBOOK EMOTION STUDY WITHOUT USERS' CONSENT

The Data Protection Authorities of the UK and Ireland began[33] to examine if Facebook violated national and European privacy laws by manipulating News Feeds to study the emotions of its users without their consent. Both agencies asked Facebook for explanations and details.

9. AFRICAN UNION ADOPTS CONVENTION ON CYBER-SECURITY AND PERSONAL DATA PROTECTION

During the 23rd Ordinary Session of the Summit of the African Union, the Convention on Cybersecurity and Personal Data Protection[34] was adopted. It provides a legal framework[35] for security and privacy issues. Several member states of the African Union still do not have specific laws regarding privacy and data protection.

10. FACEBOOK TO DISCUSS EU RIGHT TO BE DE-INDEXED WITH GERMAN DPA

The Data Protection Authority of Hamburg is meeting[36] with Facebook to discuss the ramifications of the Court of Justice of the EU ruling on the right to be de-indexed. The head of the agency stressed that the judgment made clear that "national regulation on data protection is applicable whenever an Internet provider has an active unit in that country."

11. MYANMAR BLOCKS FACEBOOK TO PREVENT VIRAL SPREAD OF RUMORS

The social network Facebook was blocked[37] in the night from July 3-4, 2014 in the Republic of the Union of Myanmar to preserve public order. Conflicts between Muslims and Buddhist were fueled by rumors about a Buddhist woman having been raped by a Muslim, which circulated on Facebook.

12. ARGENTINEAN PIRATE BAY BAN AFFECTS CITIZENS IN PARAGUAY

The 67th District Federal Court of Argentina ordered eleven ISPs to block[38] the Pirate Bay for copyright violations. Argentina is thus the first country in Latin America to block the website. 256 Pirate Bay IP addresses and 12 domains were targeted by the order. The blocking order also affects[39] certain Internet users in Paraguay, who cannot access the Pirate Bay anymore although the website is not blocked in their jurisdiction. Paraguay is landlocked between Brazil and Argentina and is connected to the Internet via these two countries.

13. GOOGLE DECIDES TO BAN PORN ADVERTISEMENT ON ADWORDS

Google changed the policy[40] of its AdWords distribution network and does not display advertisement on websites and its own services that are related to adult entertainment with "sexually explicit content".

14. BLOGGER MUST PAY DAMAGES FOR BAD REVIEW ON GOOGLE SEARCH IN FRENCH JURISDICTION

A Bordeaux judge has ruled during an emergency hearing that a French blogger must pay damages after she published a negative review of a restaurant she visited on her blog. The article was ranked highly by Google's algorithm and displayed on the first page of Google Search, which the court deemed to unfairly hurt[41] the restaurant's business.

15. TWITTER TAKES DOWN INFRINGING FIFA PROFILE PICTURES

Twitter complied[42] with a DMCA takedown request[43] by the FIFA. The FIFA complained that several accounts use the "the Official Emblem of the 2014 FIFA World Cup" without authorization as profile images. Twitter replaced the images with standard Twitter avatars.

16. BRITISH ISPS TO SEND LETTERS TO USERS SUSPECTED OF COPYRIGHT INFRINGEMENT

In spring 2015, a British coalition of rightsholders and ISPs will start[44] "a major multimedia education awareness campaign" and send out warnings to clients of major ISPs when they are suspected of downloading copyright-protected content without authorization. No further consequences are planned at the moment.

17. NEW ZEALAND ISP OFFERS CUSTOMERS A VPN TUNNEL TO THE US BY DEFAULT

The New Zealand ISP Slingshot offers[45] subscribers a "global mode" to access websites that are geo-IP blocked in New Zealand. By re-routing all traffic through a VPN tunnel to servers in the US jurisdiction, customers can use online services such as Netflix without restrictions.

18. SOCIAL MEDIA SITES ACCESSIBLE IN IRAQI JURISDICTION AGAIN

On July 1, 2014, Iraqi Telecommunications and Post Company unblocked[46] access to social media sites including Facebook, Twitter and YouTube. The ban lasted 17 days and was intended to limit the communications abilities of the Islamic State in Iraq and the Levant (ISIS). News outlets such as Al Jazeera remain blocked.

19. SINGAPORE AMENDS LAW TO BLOCK PIRACY WEBSITES

On July 8, 2014, the parliament of Singapore passed[47] amendments to the Copyright Act that allow rightsholders to get injunctions from the High Court to oblige local ISPs to block access to websites that "flagrantly infringe" copyrights.

20. SPANISH COURT REVERSES DECISION TO BLOCK COPYRIGHT INFRINGING SITES

The Spanish Court of Instruction No.10 reversed an injunction ordered by a court in Zaragoza in 2013 and unblocked six websites that were rendered inaccessible for copyright infringements in the Spanish jurisdiction. The judge argued[48] that there were "insufficient grounds" to block the websites for property infringements, "especially when it is not absolutely necessary for the continuation of the investigation".

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www.internetjurisdiction.net/observatory/retrospect/2014-july/

AUGUST

1. STUDENT LAUNCHES PRIVACY CLASS ACTION FOR INTERNATIONAL FACEBOOK USERS IN AUSTRIAN JURISDICTION

The student Max Schrems of the campaign europe-v-facebook filed on August 1, 2014 a de facto class action against Facebook Ireland at the Commercial Court of Vienna in Austria against privacy breaches of the global social network under Austrian and EU law. The alleged violations[1] include Facebook's "privacy policy, participation in the PRISM program, Facebook's graph search, apps on Facebook, tracking on other web pages (e.g. via the 'like buttons'), 'big data' systems that spy on users or the non-compliance with access requests". Facebook Ireland serves all customers of the platform outside of the USA and Canada, which amount to 80 percent of the platform's users. Over 25.000 international users already signed up to join the "class action" at the dedicated website www.fbclaim.com. The plaintiff Schrems sues the company for 500 Euro in damages per user.

Read further:
Wired: Facebook hit with international class action privacy suit[2]
BBC: Facebook privacy challenge attracts 25,000 users[3]
Reuters: Student starts global class action against Facebook[4]

2. MICROSOFT CONTINUES TO REFUSE COMPLIANCE WITH US ORDER TO HAND OVER IRISH SERVER DATA

On August 29, 2014 a judge at the US District Court of the Southern District of New York lifted[5] the stay in execution of the July 31, 2014 order that forces[6] Microsoft to hand over data stored on its servers in the Irish jurisdiction to US authorities for a criminal investigation. A US search and seizure warrant related to a Microsoft email account was initially issued on December 18, 2013. Risking repercussions, Microsoft announced that the company would not hand over any data as long as it appeals the ruling in the 2nd US Circuit Court of Appeals. Apple, Cisco, Verizon, AT&T and the Electronic Frontier Foundation have filed amicus curiae briefs[7] to support Microsoft. It remains unclear whether the owner of the email account in question is a US citizen or not.

Read further:
ZDNet: Microsoft refuses to comply after judge revives overseas data search warrant[8]
Reuters: Microsoft will not hand over overseas email, despite order[9]
Wall Street Journal: Judge Lifts Freeze on Microsoft Search Warrant[10]

3. HONG KONG COURT ALLOWS BUSINESSMAN TO SUE GOOGLE FOR AUTO-COMPLETE LIBEL

On August 5, 2014, the High Court of the Hong Kong Special Administrative Region Court of First Instance gave the green light[11] for a local entertainment tycoon to sue Google Inc., incorporated in the US jurisdiction, for auto-complete suggestions on Google Search that damage his reputation. In detail, Albert Yeung Sau-shing's name is linked[12] to the term "triad" on both the English and Chinese version of Google. The judge argued that "Google Inc is the publisher of the Words and liable for their publication" and did not agree with Google's argument that a Hong Kong court has no jurisdiction over a US-based company. The judge cited the European right to be de-indexed[13] decision and the Canadian Equustek[14] Solutions decision to delete search results globally.

Read further:
South China Morning Post: Albert Yeung's court victory over Google shows need for law to adapt[15]
Washington Post: Can Google be sued for a mere search suggestion? A Hong Kong judge says yes.[16]
GigaOM: Tycoon can sue Google over auto-complete, as Hong Kong joins global censorship push[17]

4. TWITTER AND YOUTUBE BAN GRAPHIC IMAGERY OF JAMES FOLEY EXECUTION

Twitter decided on August 20, 2014 to delete links to the video and screenshots of the execution of the US journalist James Foley by Islamic State militants. The video was uploaded on YouTube, shared widely on social media and related hashtags became trending topics on Twitter. Twitter's CEO Dick Costolo announced[18] an unprecedented step of speech-related content control on the microblogging platform in a tweet: "We have been and are actively suspending accounts as we discover them related to this graphic imagery". YouTube likewise decided[19] to delete the video within one hour after it was first uploaded. However, Google encountered problems deleting all newly uploaded versions of the video rapidly enough.

Read further:
Foreign Policy: Social media companies scramble to block terrorist video of journalist's murder[20]
GigaOM: Should Twitter and YouTube remove images of James Foley's beheading, or do we have a right to see them?[21]
NBC: Tragedy on Twitter: James Foley case raises hard social media questions[22]

5. BLOCKING APPS: BRAZIL ORDERS APPLE, GOOGLE TO REMOVE SECRET FROM STORES AND DEVICES

On August 19, 2014, the Fifth Civil Court of Victoria in Brazil issued a preliminary injunction to remove the app Secret from Google and Apple app stores in the Brazilian jurisdiction and delete copies of the software on Brazilian smartphones remotely. Microsoft was asked to remove a similar app, Cryptic, from its Brazilian Windows Phone app store. Secret, created by a US start-up, allows users to communicate anonymously, whereas the Brazilian constitution[23] bans anonymous speech: "the expression of thought is free, and anonymity is forbidden". The order targets the operators of app stores as intermediaries and not the app developer itself to ban the app in Brazil.

Read further:
SFGate: Brazil wants no Secret on app stores[24]
9to5 Mac: Brazilian judge orders Apple, Google remove Secret from the app stores, remotely delete from users' phones[25]
Business Insider: Prosecutors Want Apple To Use Its iPhone 'Kill Switch'[26]

6. APPLE STORES ICLOUD DATA OF CHINESE USERS IN CHINESE JURISDICTION

Apple started[27] on August 8, 2014 to store data of Chinese iCloud users in data centers of China Telecom. The company is state-owned. Apple stated that all iCloud data will be encrypted when stored. Concerns were rising in China about the location of data after the Snowden revelations and potential risk to national security.

7. RUSSIAN REGULATOR THREATENS TO BLOCK LOCAL BBC SITE

On August 5, 2014 the Russian telecommunications regulator Roskomnadzor threatened[28] to block the Russian BBC Service if the British media outlet refuses to remove an interview from their website that is deemed to appeal "to riots, extremist activities or participation in mass public activities conducted in violation of the legal order". BBC announced[29] that it will not comply with takedown demands.

8. TWITTER RECEIVES MORE REQUESTS FOR CONTENT TAKEDOWNS AND ACCESS TO USER DATA

Twitter published[30] a new transparency report covering the period from January to June 2014. Requests for user data increased by 46 percent. The company received 2.058 direct requests from 40 countries. Concerning takedowns, Twitter received 14 percent more removal requests, thus 432 direct requests from a total of 31 countries.

9. CHINA REQUIRES REAL NAME REGISTRATION FOR MESSAGING APPS

A new rule issued[31] on August 7, 2014 by the Chinese State Internet Information Office orders operators of mobile messaging apps such as WhatsApp to require users in the Chinese jurisdiction to register accounts with their real names. Users can still use pseudonyms as handles.
10. British ISP voluntarily forwards US copyright notice
The UK ISP TalkTalk forwarded a US copyright infringement notice regarding a customer to its reseller Opal Solutions. ISPs in the UK are not legally required to forward such notices and TalkTalk does not send notices to its direct customers. It remains unclear if Opal Solutions will deliver the notice to its customer.

10. BRITISH ISP VOLUNTARILY FORWARDS US COPYRIGHT NOTICE

The UK ISP TalkTalk forwarded[32] a US copyright infringement notice regarding a customer to its reseller Opal Solutions. ISPs in the UK are not legally required to forward such notices and TalkTalk does not send notices to its direct customers. It remains unclear[33] if Opal Solutions will deliver the notice to its customer.

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SEPTEMBER

1. RUSSIAN REGULATOR DEMANDS FACEBOOK, GOOGLE, TWITTER COMPLY WITH DATA LOCALIZATION LAW

On September 26, 2014, the Federal Russian regulator Roscomnadzor sent[1] notices to globally operating US social media platforms to comply with a set of amendments to the Administrative Code, the Law on Information and the Law on Communications. The regulation, know as the Russian "Blogger's law", was signed in May 2014 by President Putin. During a first reading on September 19, 2014, the Russian Duma decided to speed up the implementation of the new law from September 2016 to January 2015. The new law requires blogs with more than 3.000 readers per day to register as "organizers of information distribution". Moreover, operators of such websites must store data of Russian users physically on servers in the Russian jurisdiction. Platforms that do not comply with these requirements upon a second notice face a fine of 500.000 rubles and can be blocked in Russia by Roscomnadzor. Russian services such as VKontakte, Yandex and Mail.Ru already registered their activities.

Read further:
The Moscow Times: Russia asks Facebook, Google, Twitter to comply with law on data storage[2]
Quartz: The Kremlin wants more control over Facebook, Google and Twitter[3]
ITAR -TASS: Facebook and Twitter asked to register in Russia as organizers of information distribution[4]

2. EU DATA PROTECTION AUTHORITIES ISSUE PRIVACY GUIDELINES FOR GOOGLE

The consolidation of the privacy policies of 60 Google services under a new Terms of Service on March 1, 2012 triggered investigations by EU data protection authorities in Italy, France, Spain, Germany, Britain and the Netherlands for violations of EU and national privacy laws. On September 23, 2014, the Article 29 Working Party, a group of all EU Data Protection authorities, issued guidelines with 19 suggestions for Google to change its privacy policy in order to comply with the norms of the EU jurisdiction. It is stressed that the recommendations were drafted for "illustrative purposes" to achieve compliance and that they "do not preempt enforcement actions by national authorities based on national law". The Working Party moreover announced that it "may also consider issuing guidance on specific issues to the entire industry, at a later stage".

Read further:
EU Article 29 Working Party: List of possible compliance measures[5]
PC World: Google gets privacy policy lesson from EU data protection authorities[6]
BBC: Google urged to change privacy rules by data regulators[7]

3. NEW BILL IN US JURISDICTION ON CROSS-BORDER ACCESS TO USER DATA

On September 18, 2014, following an email privacy case[8] that involves Microsoft, three US Senators presented the bipartisan Law Enforcement Access to Data Stored Abroad Act[9] (LEADS Act). It would require judicial warrants for law enforcement agencies to access all kinds of user data and corresponding user notification for such actions. Moreover, it would enshrine[10] the territorial principle that US authorities can access data stored by companies incorporated in the US on servers in other jurisdictions if the content is held by a "US person", i.e. a US citizen, permanent US resident or US company. To access data of citizens of foreign jurisdictions, US authorities would need to comply with the requirements stipulated by the respective national laws and existing inter-state legal cooperation mechanisms, such as mutual legal assistance treaties (MLATs). Under the proposed bill, the US Department of Justice would also need to create an online portal for MLAT requests from foreign countries and publish statistics on the processing of such requests.

Read further:
The Hill: Tech firms celebrate 'milestone' privacy bill[11]
ArsTechnica: Bill would limit reach of US search warrants for data stored abroad[12]
Center for Democracy & Technology: LEADS Act Extends Important Privacy Protections, Raises Concerns[13]

4. RIGHT TO BE DE-INDEXED: EU DATA PROTECTION AUTHORITIES DEVELOP COORDINATED APPROACH FOR APPEALS

Discussing the implementation of the May 13, 2014 ruling by the Court of Justice of the EU, the EU Article 29 Working Party announced[14] on September 18, 2014 the creation of a "common tool-box to ensure a coordinated approach to the handling of complaints resulting from search engines' refusals to 'de-list' complainants from their results". The coordination mechanism for appeals will include "a network of dedicated contact persons to develop case handling criteria", "a common record of decisions taken on complaints" and a "dashboard to help identify similar cases as well as new or more difficult cases" to ensure consistency in the implementation of the ruling. The tool-box is expected to be finalized by November 2014. While Google received over 120.000 requests in the EU, the current number of appeals to DPAs is yet rather low according to news reports[15]: 90 in the UK, 70 in Spain, 20 in France and 13 in Ireland.

Read further:

EU Article 29 Working Party: Press release on 'common tool-box'[16]
Wired: 'Right to be forgotten' appeals process nears[17]
TechCrunch: Europe seeks a common appeals process for the 'right to be forgotten'[18]

5. DIGITAL SOVEREIGNTY: RUSSIA SAID TO CONSIDER SEPARATION OF ITS NATIONAL INTERNET SEGMENT IN EMERGENCIES

According to an article[19] published by the Russian newspaper Vedomosti on September 19, 2014, the Russian Security Council is discussing possible measures to guarantee the sovereignty of the Russian Internet segment in emergencies. This could include the creation of the ability to disconnect[20] Russia from the global Internet by ordering domestic ISPs to install the necessary equipment. Emergency situations are defined as military actions or serious public order issues. The Kremlin's press secretary immediately denied[21] plans to cut off Russia from the global Internet. The Security Council is discussing possibilities to gain state control over the Russian ccTLDs .RU, .ĐĐ," and the former .SU, which are currently administered by the non-profit organization Coordination Center for TLD RU.

Read further:
International Business Times: Kremlin mulls Internet 'kill switch' to knock Russia offline during emergencies[22]
Moscow Times: Russian Internet faces tighter Kremlin control[23]
Russia Beyond the Headlines: Kremlin weighs options for isolating Russian Internet in event of crisis[24]

6. MICROSOFT ACCEPTS 'CONTEMPT OF COURT' TO APPEAL CASE ON EXTRA-TERRITORIAL DATA ACCESS

Microsoft refuses[25] to hand over email data about a user to US authorities despite a valid US warrant since the data is stored on its servers in the Irish jurisdiction. On September 4, 2014 Microsoft and the US government agreed to a deal[26] under which Microsoft will be held in contempt of court in order to be able to appeal the case. The agreement specifies that, "sanctions need not be imposed at this time".

7. GOOGLE, MICROSOFT, TWITTER, YAHOO PUBLISH NEW TRANSPARENCY REPORTS

Four US platforms released new data on requests for user data and content takedowns from January 1 to June 30, 2014. Google[27] received 31.698 requests for 48.615 accounts from 69 jurisdictions. Microsoft[28] received 34.494 requests for 58.562 accounts from 80 jurisdictions. Twitter[29] received 2.058 user data requests for 3.131 requests from 40 jurisdictions and 432 governmental content takedown requests from 21 jurisdictions. Yahoo[30] received 18.594 requests for 30.511 accounts from 39 jurisdictions and five governmental requests for content takedowns from the US, UK and India.

8. NEW TURKISH LAW GIVES REGULATOR POWERS TO BLOCK WEBSITES

On September 10, 2014, the Turkish parliament adopted[31] a new law that gives the Telecommunications Directorate (TIB), the Turkish regulator, the power to order the blocking of websites within four hours for "national security, to protect public order, or to prevent a crime from being committed". A court must validate or overturn the executed order within 48 hours. On September 15, 2014, the Republican People's Party appealed[32] the new law before the Turkish Constitutional Court.

9. CHINA BLOCKS INSTAGRAM OVER HONG KONG PROTESTS

On September 28, 2014 China blocked[33] the photo-sharing app Instagram in its jurisdiction to prevent the spread of pictures from the protests in Hong Kong. The app remained accessible in Hong Kong. Further, China blocked[34] news articles and searches on platforms such as Sina Weibo for "tear gas".

10. NETFLIX PRESSURED TO BLOCK VPN USERS

About 200.000 Australians are using[35] the US version of Netflix through a VPN service that allows them to cybertravel and access the US version with a US IP address. Copyright holders are therefore pressuring the streaming service to ban VPN users. If implemented, a ban would prevent[36] worldwide users of Netflix to use VPN services to access Netflix, both for cybertravel and privacy reasons. The US streaming platform Hulu already implemented similar measures.

11. LONDON POLICE SENDS 'NOTICES OF CRIMINALITY' TO DOMAIN NAME REGISTRARS

Since 2013, the City of London Police in an effort to combat online piracy is sending notices to international domain registrars informing them about illegal content on registered sites. To date, only 5 out of 75 letters were granted[37]. In a new letter to the Canada-based registrar easyDNS, the London police sends[38] a "notice of criminality" with references to UK legislation without demanding specific actions.

12. LINKEDIN RECONSIDERS CONTENT REMOVAL POLICY IN CHINESE JURISDICTION

To date, US-based social network LinkedIn removes content posted by users in the Chinese jurisdiction that infringes national laws and rules worldwide for all global users. On September 2, 2014 a spokesperson of LinkedIn said[39]: "[W]e are strongly considering changing our policy so that content from our Chinese members that is not allowed in China will still be viewed globally".

13. GROUP OF 39 PRIVACY AUTHORITIES FIND THAT APPS INSUFFICIENTLY PROTECT PRIVACY

The Global Privacy Enforcement Network[40], a group of 39 national privacy authorities, published a survey[41] of the privacy policies of 1.211 apps and found that 85 percent of them do not sufficiently[42] explain how personal user data is collected, processed and shared.

14. BRITISH ISPS BLOCK LARGEST PIRATE BAY PROXY

Major ISPs in the UK jurisdiction have blocked[43] the popular website pirateproxy.in that allows access to the file sharing torrent library The Pirate Bay – which is banned in the UK. However, the proxy website added a new domain registered under Belize's cc-TLD .bz and was accessible again for UK Internet users.

15. CHINESE AGENCY CRACKS DOWN ON PORNOGRAPHY, CLOSES 1.8M ACCOUNTS

In an anti-online pornography campaign, the Chinese Cyberspace Administration has shut down[44] almost 1.8 million accounts on Chinese microblogs, social networks and smartphone apps. Most accounts were closed on WeChat and QQ.

16. REPUTATION: US DRAFT BILL TO PROTECT NEGATIVE CONSUMER REVIEWS OF BUSINESSES

The proposed Consumer Review Freedom Act of 2014[45] in the US Congress would limit[46] the possibilities of US companies to prohibit or remedy against negative online reviews. A bill[47] passed in California already addresses the protection of negative online reviews at the state level.

17. TANGO, VIBER, WHATSAPP TO BE BLOCKED IN IRANIAN JURISDICTION

Iran's Prosecutor General demanded[48] the Ministry of Communications and Information Technology to block within one month the messaging apps Tango, Viber and WhatsApp in Iran due to the dissemination of obscene material and offensive content, some of which is managed by "governments hostile to the Islamic Republic of Iran establishment".

18. LEBANON ORDERS ISPS TO BLOCK PORN SITES

In a communiqué, the Lebanese Minister of Communication ordered[49] national ISPs to block access to six pornographic websites. Producing and distributing pornographic content is illegal in the Lebanese jurisdiction.

19. RUSSIA POSTPONES DRAFT BILL THAT FORCES VOIP OPERATORS TO DISPLAY "REAL" TELEPHONE NUMBERS

Just before a first reading in the Duma on September 25, 2014, Russian legislators postponed[50] an amendment that would require VoIP operators such as Skype to display the "real number" when calling normal phones. Operators would otherwise loose their license in the Russian jurisdiction. The initiative was deferred due to confusion about the technical feasibility and rumors that Russia would try to block Skype.

20. BBC SUGGESTS ISPS SHOULD OBSERVE AND BAN VPN USERS WITH HIGH DATA TRAFFIC

BBC Worldwide in a submission to the Australian government suggests that in order to act against online piracy, ISPs should monitor[51] customers' activities and especially focus on those using VPN services and consuming high bandwidths. The BBC argues for a graduated response scheme with reduced speeds and educational messages.

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OCTOBER

1. SPANISH COURT ORDERS GOOGLE TO PAY DAMAGES IN RIGHT TO BE DE-INDEXED CASE

Applying the Court of Justice of the EU ruling on the right to be de-indexed, the Barcelona Court of Appeals ordered Google Spain to pay damages to a Spanish citizen. A website containing information about the pardoning of a drug trafficking crime appeared in search results for the individual's name. The plaintiff filed a complaint with the Spanish Data Protection Authority, which ordered Google to remove the link. The delay between notification and removal was 10 months. The court argued that Google Spain is liable for the search engine operated by Google Inc. in the Spanish jurisdiction and that the platform lost Safe Harbor protections after it received the removal notification. Therefore, Google was sentenced to pay 8.000 Euro for moral damages that occurred during that period of time. Damage claims against the two other defendants Yahoo Spain and Telefonica were dismissed. The case is now appealed to the Spanish Supreme Court.

Read further:
CIS Stanford: Right to be forgotten – Google sentenced to pay damages in Spain[1]
Barcelona Court of Appeals: Judgment don Domingo contra Google Spain, S.A., Yahoo Iberia, S.L. y contra Telefonica de España, S.A (in Spanish)[2]
Cinco Dias: Primera sentencia civil en España contra Google por el derecho al olvido (in Spanish)[3]

2. TWITTER SUES US GOVERNMENT OVER NON-DISCLOSURE REGULATIONS

On October 7, 2014, Twitter filed a lawsuit[4] in the US District Court of Northern California against the US Department of Justice and the Federal Bureau of Investigation in Northern California. The company argues that non-disclosure regulations applying to National Security Requests and FISA letters violate its First Amendment rights to free speech. A number of companies including Google, Facebook and Microsoft reached a settlement[5] in January 2014 with the US Department of Justice, which allows them to only display the number of security requests in groups of 1000 in transparency reports. Twitter said it is not bound by this agreement and wants, among others, to have the right to state if it received zero requests.

Read further:
Reuters: Twitter sues U.S. Justice Department for right to reveal surveillance requests[6]
New York Times: Twitter sues US government over data disclosure rules[7]
Gigaom: Are "warrant canaries" legal? Twitter wants to save tech's warning signal of government spying[8]

3. GOOGLE PUBLISHES TRANSPARENCY REPORT ON EU DE-INDEXING REQUESTS

On October 9, 2014 Google published for the first time statistics[9] on the requests it receives under the Court of Justice of the European Union right to be de-indexed judgement in its transparency report. Between May 29, 2014, when Google opened its complaint form, and October 31, 2014, the company received 158.626 requests for 531.134 URLs. It complied with 41.8 percent of all requests. The top 10 concerned websites only account for six percent of all requests. Facebook leads the list of de-indexed websites (3.581 removals), followed by profileengine.com (3.482) and youtube.com (2.483).

Read further:
New York Times: Google provides details on 'Right to Be Forgotten' requests in EU[10]
Gigaom: Company's new stats give good insight into "right to be forgotten" complexity[11]
TechCrunch: Google adds European search de-listing requests to its transparency report[12]

4. TURKISH CONSTITUTIONAL COURT ANNULS WEBSITE BLOCKING AUTHORITY OF REGULATOR

On October 2, 2014 the Turkish Constitutional Court declared[13] the power of the national regulator Telecommunications Directorate (TIB) to block any website within four hours and without prior court orders for reasons of "national security, the restoration of public order and the prevention of crimes" as unconstitutional. In doing so, the court overturned a new law passed by the Turkish parliament on September 10, 2014 as an amendment to the national Internet Law #5651. The Turkish Prime Minister criticized[14] this judgement.

Read further:
Hürriyet: Turkish Constitutional Court strips Internet authority of right to close websites[15]
Reuters: Turkey's top court annuls part of law tightening Internet controls[16]
EDRi: Turkey: Constitutional Court overturns Internet law amendment[17]

5. EMBEDDING CONTENT DOES NOT INFRINGE COPYRIGHTS, RULES EU COURT

On October 21, 2014 the Court of Justice of the EU decided[18] in a landmark ruling that embedding videos or files on websites without the prior consent of copyright owners does not infringe the EU Copyright Directive[19], which does not explicitly mention the legality of embedding. The content must however remain unaltered and not communicated to a new public[20]. The case was referred to the court from the German jurisdiction. The lawsuit[20] involves the German water filter producer BestWater, which wanted to prevent a competitor from embedding one of its promotional videos on its website.

Read further:
IP Kitten: That BestWater order: it's up to the rightholders to monitor online use of their works[22]
TorrentFreak: Embedding is not copyright infringement, EU court rules[23]
Register: An 'embed' link isn't a new infringement, says EU Court of Justice[24]

6. ICELAND'S CC-TLD OPERATOR SHUTS DOWN ISLAMIC STATE DOMAIN

The Islamic State (IS) registered the domain "khilafah" (Caliphate) under Iceland's cc-TLD .is in September 2014. The website is also hosted at a data center near Reykjavik. After Iceland's Ministry of Justice launched investigations on how to shut down the site, ISNIC, the manager of .is, took down[25] the domain voluntarily on October 12, 2014. It is the first time[26] that ISNIC shuts down a domain for content reasons. The decision is based[27] upon Article 9 of ISNIC's Rules on Domain Registration, which states: "The registrant is responsible for ensuring that the use of the domain is within the limits of Icelandic law as current at any time."

7. UK ASKS FACEBOOK, GOOGLE, MICROSOFT, TWITTER TO AUTOMATICALLY HAND OVER DATA RELATED TO TERRORIST CONTENT

On October 20, 2014, officials of the British Prime Minister's Office met[28] with Facebook, Google, Microsoft and Twitter to discuss the removal of online content related to ISIS and terrorist activities. The government proposes that the companies automatically hand over personal data, such as IP addresses, names or messages related to executed takedown requests. The data would be aggregated in a centralized database.

8. NEW GOOGLE ALGORITHM RANKS DOWN COPYRIGHT-INFRINGING WEBSITES

Announced[29] in August 2012, Google launched[30] on October 17, 2014 a new algorithm that will be progressively rolled out on its search engine. It decreases[31] the rank of websites alleged of copyright infringement in its results, based upon the number of valid DMCA takedown notices the company receives.

9. LEAKED TPP DRAFT DETAILS STRONG ISP LIABILITY PROVISIONS

Wikileaks leaked a May 2014 draft of the Trans-Pacific Partnership Agreement negotiated between 12 countries on October 16, 2014. Specialized media report[32] that according to the document, ISPs would have to alert customers that download copyright-infringing content. Companies as well as individuals providing Internet services could moreover be liable for copyright infringements committed by others through their networks.

10. DUTCH LAW ENFORCEMENT ASKS HOSTING PROVIDERS TO TAKE DOWN EXTREMIST MATERIAL WITHOUT COURT ORDERS

Hosting providers in the Dutch jurisdiction complain[33] about increasing requests by public prosecutors that ask them to remove "jihadist" material without proper judicial reviews, based only on criminal suspicion.

11. UK INCREASE SENTENCES FOR "INTERNET TROLLS" AND CRIMINALIZES REVENGE PORN

Amendments to the British Criminal Justice and Courts Bill adopted by the UK House of Lords in October 2014 increase the sentences for online harassment[34] including sexually offensive speech, verbal abuse or threats to two years. Moreover, revenge porn[35] becomes a criminal offense. The new provisions do not apply in the Scottish jurisdiction.

12. RUSSIA POSTPONES DATA LOCALIZATION LAW

According to Russian media reports, proposed amendments that would oblige companies to store personal data of Russians in the Russian jurisdiction were "postponed for an indefinite period"[36]. The bill already went through two readings in the Russian parliament. Lawmakers responded to concerns of domestic companies such as Aeroflot, which feared the rash implementation of the law envisaged for January 2015 and demanded more time to prepare.

13. PUTIN OFFICIALLY SUPPORTS PLANS FOR SECURE RUSSIAN INTERNET SEGMENT

In a speech[37] to the Russian National Security Council on October 1, 2014, Russian President Putin announced his support for the idea to create a secure Russian Internet segment. This would include developing capacities for a "kill switch" and creating a back-up system for Russian domains. President Putin said Russia does not "intend to limit access to the Internet, to put it under total control, to nationalize the Internet".

14. ITALIAN SUPREME COURT TO DECIDE IF COPYRIGHT INFRINGING CONTENT CAN BE BLOCKED WITHOUT COURT ORDER

The Supreme Court of Italy will rule on the legality[38] of the Regulation on Online Copyright Infringement, which came into force in April 2014. It gives the regulator AGCOM the power to order directly the blocking of infringing content in the Italian jurisdiction or to take down content through an administrative procedure.

15. US NGO DEMANDS GOOGLE RIGHT TO BE DE-INDEXED IN US JURISDICTION

In an open letter, a US NGO asked[39] Google to introduce the right to be de-indexed in the US jurisdiction. The company created a mechanism to remove certain search results for privacy reasons to implement a judgment by the Court of Justice of the European Union. The mechanism is currently only employed in Europe.

16. ICELANDIC ISPS ORDERED TO BLOCK THE PIRATE BAY

The Reykjavík District Court ordered[40] the Icelandic ISPs Vodafone and Hringdu to block domains of the torrent libraries The Pirate Bay and Deildu. Deildu quickly moved[41] its domain to the cc-TLD of Saint Pierre and Miquelon, which remains accessible in Iceland.

17. GOOGLE REMOVES HACKED ICLOUD PICTURES TO PREEMPT LAWSUIT IN US

Following a series of leaked nude photos from hacked celebrity iCloud accounts, victims in the US jurisdiction threatened[42] Google with a 100 million USD lawsuit on October 2, 2014. The company only removed 49 percent of 461 URLs that were flagged through the DMCA procedure. Hours later, Google removed "tens of thousands of pictures"[43] from its services.

18. UK POLICE "SEIZES" .COM STREAMING WEBSITE

The City of London Police was successful in shutting down[44] the domain of the sports streaming site frombar.com, registered with the US-based registrar eNom. The registrar responded to a "warning letter" of the London police that asked it to suspend the infringing website. Registrars such as Canada-based EasyDNS protest against this practice of "seizure".

19. BLOCKING OF ENTIRE WEBSITES FOR COPYRIGHT INFRINGEMENT IS DISPROPORTIONATE, ITALIAN AUTHORITIES DECIDE

In July 2014, a court in Rome ordered[45] Italian ISPs to block websites including MEGA and Mail.ru in the Italian jurisdiction for copyright infringements. Some websites successfully appealed the case before the Court of Appeals of Rome, while others reached a settlement with the Office of the Prosecutor of Rome. In both cases, authorities decided[46] that the blocking order was disproportionate. Several websites are therefore accessible again in Italy.

20. DATA PROTECTION AUTHORITIES ENDORSE AGREEMENT ON CROSS-BORDER ENFORCEMENT COOPERATION

During the 36th International Data Protection Commissioners Conference which took place in Mauritius on October 13-16, 2014, the data protection authorities endorsed the Global Cross-Border Enforcement Cooperation Agreement[47] that would allow, for example, multiple agencies to collaborate to handle a major data breach.

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FIND ALL LINKS TO THESE ENDNOTES ON OUR WEBSITE:

www.internetjurisdiction.net/observatory/retrospect/2014-october/

NOVEMBER

1. SEARCH ENGINES ARE NOT LIABLE FOR RESULTS, RULES ARGENTINE SUPREME COURT

The Supreme Court of Argentina decided in a landmark ruling[1] that search engines are not liable for third party content appearing in results they display. In the absence of specific legislation on intermediary liability in Argentina, the case sets new national standards and is likely to have impacts in other jurisdictions in Latin America. The case goes back to 2006 and involved a model who sued Google and Yahoo! Argentina for search results that linked her name to pornographic websites. The plaintiff argued that the search engines violated her privacy rights, damaged her reputation and infringed her image control rights through the unauthorized display of preview thumbnails. According to the judgment, search engines do not have to monitor search results, but do need to act upon notifications. Moreover, notices for content takedowns require generally judicial review and search engines do not have the obligation to install preemptive filtering mechanisms for future infringing results. The Court also qualified Google Image thumbnails as mere links.

Read further:
e-Bertoni: Supreme Court of Argentina rules Google not liable for search results[2]
Stanford CIS: Argentine Supreme Court decides landmark intermediary liability case[3]
Open Society Foundation: Case Watch: Top Argentine Court Blazes a Trail on Online Free Expression[4]

2. EU DATA PROTECTION AUTHORITIES WANT RIGHT TO BE DE-INDEXED EXTENDED TO .COM

On November 26, 2014, the 29 European Data Protection Authorities of the Article 29 Working Party agreed[5] on non-binding guidelines regarding the application of the right to be-indexed Court of Justice of the EU ruling. The group came to the conclusion that the application of the ruling, currently limited to European-based ccTLDs by Google, has an insufficient geographical reach: "de-listing of EU domains on the grounds that users tend to access search engines via their national domains cannot be considered a sufficient mean [...] this means that in any case de-listing should also be effective on all relevant domains, including .com". The document lists 13 points to balance freedom of expression and privacy. Among others, the Working Party does not deem the automatic informing of webmasters on de-indexed results as an obligatory practice, as it can have a contradictory impact on the privacy of individuals.

Read further:
Article 29 Working Party: Guidelines on the implementation of the Court of Justice of the European Union judgement on Google Spain and Inc. v. Agencia Espanola de Preteccion de Datos and Mario Costeja[6]
Bloomberg: Google pushed to extend 'forgotten' requests to US site[7]
Guardian: EU to Google: expand 'right to be forgotten' to Google.com[8]

3. IRANIAN, NORTH KOREAN AND SYRIAN CCTLDS CANNOT BE SEIZED FROM ICANN, US COURT RULES

The US District Court for the District of Columbia decided[9] on November 10, 2014 that the ccTLDs of Iran, North Korea and Syria cannot be seized from ICANN, a non-profit corporation incorporated in California. The case was rooted[10] in a 1997 terrorism attack in Jerusalem following which a US court awarded 109 million USD of damages in 2003 to the victims. Trying to collect the money, the victims wanted to gain control of the ccTLDs. The court came to the conclusion[11] that a "ccTLD, like a domain name, cannot be conceptualized apart from the services provided by these parties". Being rather an "ongoing contractual arrangement", the judge ruled that ccTLDs as contractual rights cannot be seized under District of Columbia law. The judge added to the memorandum opinion that "the conclusion that ccTLDs may not be attached in satisfaction of a judgement under DC law does not mean that they cannot be property".

Read further:
ArsTechnica: Judge sides with ICANN: Plaintiffs can't take all of Iran's domain names[12]
Washington Post: DC Court rules that Top-Level Domain not subject to seizure[13]
Register: Judge: Terror bomb victims CAN'T seize Iran's domain name as compensation[14]

4. US COURT TO RECONSIDER BAN OF INNOCENCE OF MUSLIMS YOUTUBE VIDEO

In February 2014, a US court ordered Google to remove the controversial Innocence of Muslims YouTube video. One actor claimed that her individual copyrights were infringed by the short movie. Believing she acted in an adventure movie, her performance was edited into the final movie in a way she did not consent to. The court decided in her favor[15]. Prior to this ruling, Google refused to globally remove the video from YouTube for public order reasons, which sparked global protests. Following court papers filed by Netflix, Twitter and the ACLU, among others, the 9th US Circuit Court of Appeals voted[16] on November 12, 2014 to re-examine the copyright case. The hearing is planned for December 15, 2014.

Read further:
Reuters: Appeals court will revisit order to remove anti-Islamic film from YouTube[17]
Wall Street Journal: Appeals court to take another look at 'Innocence of Muslims' copyright ruling[18]
PC World: Appeals court to revisit controversial YouTube video takedown[19]

5. UK WANTS ACCESS TO US PLATFORMS TO PREVENT TERRORISM, BLAMES FACEBOOK FOR LACK OF MONITORING

The UK Parliament's Intelligence and Security Committee released on November 25, 2014 a report[20] on the murder of a British soldier with a terrorism background. It accuses[21] "communications services providers" as providing a "safe haven for terrorists" and states that British authorities could have prevented the attack if an unnamed company – identified later as being Facebook – would have warned intelligence service about a conversation taking place on its platform. Apple, Facebook Google, Microsoft, Twitter and Yahoo are among the companies cited by the report as "examples". The report blames platforms for insufficiently monitoring user-generated content to "take action or notify the authorities when its communications services appear to be used by terrorists". Prime Minister David Cameron announced[22] his willingness to introduce new laws to force foreign-based companies to disclose data related to presumed terrorist activities to UK authorities.

Read further:
BBC: Facebook hosted Lee Rigby death chat ahead of soldier's murder[23]
Guardian: Lee Rigby murder: Facebook could have picked up killer's message[24]
Telegraph: David Cameron wants Google and Facebook to monitor terrorist threats[25]

6. UN ADOPTS RESOLUTION ON PRIVACY IN DIGITAL ERA

On November 25, 2014, the Human Rights Committee of the UN General Assembly passed[26] by consensus without a vote the resolution on privacy in the digital era that was co-sponsored by 65 countries. It demands that states provide remedies to citizens if their privacy rights were violated by arbitrary surveillance and states that private companies have a "responsibility to respect human rights". The non-binding resolution was introduced[27] by Germany and Brazil and will go to the full General Assembly in December 2014.

7. CHINA AND US COORDINATED TAKE DOWN OF EXTREMIST ONLINE MATERIAL HOSTED IN US

The Chinese Ministry of Public Security coordinated[28] with US authorities the removal of extremist propaganda videos and audio files that were hosted on a server based in the US jurisdiction. The action is part of an enhanced bilateral judicial cooperation regime to fight terrorism. China demanded[29] more international cooperation on extremist online material at the UN in September 2014.

8. FRENCH COURT ORDERS GOOGLE TO DE-INDEX SEARCH RESULTS GLOBALLY

For the first time in Europe, a national court ordered[30] a local Google branch to de-index search results globally, based on the May 2014 Court of Justice of the EU judgment. Ruling a defamation case against Google France, the Tribunal de Grande Instance in Paris concluded that it was insufficient that Google only removed results from google.fr. Google was ordered to pay a 1.000 Euro fine per day unless it completely de-indexes the results.

9. US FIRST AMENDMENT APPLIES TO GOOGLE'S SEARCH RESULTS, SAN FRANCISCO COURT RULES

While the Court of Justice of the EU obliged Google to regulate certain search results, a state court in San Francisco ruled[31] that Google's search results and their ranking are protected by free speech rights under the First Amendment. A US news website tried to argue[32] that Google had unfairly ranked down its search position.

10. GOOGLE SETTLES HONG KONG DEFAMATION LAWSUIT IN UK JURISDICTION

A Hong Kong-based investor sued Google for defamation as search results pictured him as a murderer and pedophile. The case went to the UK High Court. Google settled[33] the lawsuit stating it was not responsible for policing the Internet, but that the company will "continue to apply its procedures that have been developed to assist with the removal of content which breaches applicable local laws".

11. DANISH COURT ORDERS BRITISH WEBSITE TO BLOCK DANISH INTERNET USERS

Due to a copyright dispute, a court in Denmark ordered[34] on November 12, 2014 that the British website volga.com should block visitors with a Danish IP address to prevent them from accessing its website. Volga sells replicas of Danish design furniture, which are protected under Danish law. It is however not directly targeted at Danish customers.

12. SWEDISH ISP OFFERS USERS FREE VPN

Bahnhof, a Swedish ISP, announced[35] it will comply with mandatory national data retention laws following a court order. However, the ISP will offer customers the possibility of using a free VPN operated by an NGO that would allow them to circumvent the national data retention legislation as VPN operators are not obliged to store data.

13. BRITISH ISPS AGREE TO BLOCK EXTREMIST CONTENT IN UK JURISDICTION

The British ISPs BT, Virgin, Sky and TalkTalk agreed[36] to a proposal by the UK Prime Minister's office to establish a public reporting mechanism and a filtering list modeled after a national system already used to prevent child exploitation online. The London Police's Counter Terrorism Internet Referral Unit will manage the new system.

14. TERMS OF SERVICE: CONSUMER GROUP BRINGS NETFLIX IN FRONT OF FRENCH COURT

The largest consumer organization in France has filed[37] a lawsuit against Netflix at a Parisian court. The group sues Netflix for clauses in its Terms of Service, including for provisions that allow the company to modify the contract without prior notification and the fact that the terms of use are only available in English and not in French.

15. LITTLE SUPPORT FOR SCHENGEN-INTERNET AT GERMAN SECURITY SUMMIT

The idea of creating a EU-wide "Schengen Internet", advanced by the ISP Deutsche Telekom, gained little support[38] at the German Cyber Security Summit that gathered leaders from business and government. The proposal of routing data exclusively on EU territory to prevent foreign surveillance was discussed during a meeting between the German and French heads of state earlier in 2014.

16. INDIA TURNS TO ISPS TO FIGHT "PROBLEM OF PORN"

The Indian government is determined to make adult content inaccessible in its jurisdiction. At a meeting[39] of the Indian Cyber Regulation Advisory Committee, the creation of a blocking list of pornographic websites that would then be handed down to national ISPs was discussed. At the previous committee meeting in August 2014, the government still rejected website blocking as an appropriate solution.

17. BRITISH HIGH COURT SETS NEW BLOCKING RECORD FOR COPYRIGHT REASONS

The UK High Court ordered[40] the largest six British ISPs to block a total of 53 websites in the country that were deemed to infringe copyrights. Raising the number of websites blocked for copyright reasons to 93 in the UK, the ruling has the biggest impact since the first piracy website was blocked in 2012.

18. INDIA ACCUSES US COMPANIES OF COPYRIGHT INFRINGEMENTS

During the India-US Trade Policy Forum, the two countries discussed online piracy challenges related to the Hollywood and Bollywood industries. India accuses[41] over 600 US websites including Google and Amazon to violate national copyrights. During the meeting, the US officially acknowledged that India also faces online copyright challenges.

19. EUROPE AND US TAKE DOWN ILLEGAL TOR MARKETPLACES

Sixteen European countries and the US have coordinated[42] efforts to take down 410 hidden websites that facilitated "dark markets" for drugs or weapons. The action also targeted Silk Road 2.0 and its alleged operator was arrested.

20. CHINA UNBLOCKS FOREIGN INTERNET PLATFORMS FOR INTERNATIONAL MEETING FOR THE FIRST TIME

During a summit of the Asia-Pacific Economic Cooperation taking place in Beijing on November 10-12, 2014, the Chinese administration allowed participants to access websites which are currently blocked in the Chinese jurisdiction including Twitter, YouTube or Facebook. It was the first time[43] that China offered unfiltered Internet access during an international conference.

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www.internetjurisdiction.net/observatory/retrospect/2014-november/

DECEMBER

1. IRELAND FILES AMICUS CURIAE BRIEF IN US CASE ABOUT ACCESS TO IRISH MICROSOFT SERVERS

The Irish government filed on December 23, 2014 an amicus curiae brief[1] at the US Court of Appeals for the Second Circuit to support Microsoft's position in a criminal case that involves data stored on Irish Microsoft servers. A US court had ordered[2] Microsoft to hand over data related to an ongoing investigation to US law enforcement through an extraterritorial warrant. Ireland argues in the friend-of-the-court brief that it "does not accept any implication that it is required to intervene into foreign court proceedings to protect its sovereignty" and refers to the US-Irish Mutual Legal Assistance Treaty[3] through which the US could ask for legal cooperation in the criminal case.

Read further:
Irish Times: Government files supporting brief for Microsoft in US case[4]
CNET: Ireland sides with Microsoft in email privacy case[5]
PC Mag: Ireland weighs in on Microsoft's data fight with US[6]

2. GMAIL APPEARS TO BE BLOCKED AT IP LEVEL IN CHINESE JURISDICTION

Since 2009, Google serves users from mainland China through servers located in Hong Kong. On December 26, 2014, traffic to Gmail from China was disrupted, as visualized[7] in the Google Transparency Report. Several news outlets report[8] that Chinese authorities could have decided to block Gmail at the level of IP addresses for "security reasons"[9]. This means that backbone routers block the connection of Chinese users to Google's Hong Kong-based servers. Until the blocking, users in China were able to still access Gmail through IMAP and POP3 protocols.

Read further:
LA Times: Gmail traffic slowly resumes in China; government involvement denied[10]
Computerworld: China blocks Gmail at the IP level[11]
New York Times: Chinese access to Gmail cut, regulators blamed[12]

3. FACEBOOK FACES CLASS ACTION LAWSUIT IN US JURISDICTION FOR PRIVACY VIOLATIONS

On December 23, 2014, the US District Court of the Northern District of California denied Facebook's motion to dismiss a class action lawsuit[13] for the violation of federal and California privacy laws in the US jurisdiction. Until October 2012, Facebook scanned[14] private communications between users on its platforms for links to websites, which were then used for targeted advertisements. The judge argued[15] that Facebook's Terms of Service did "not establish that users consented to the scanning of their messages for advertising purposes, and in fact, makes no mention of 'messages' whatsoever." The plaintiffs argue in the lawsuit filed in 2013 that Facebook's Terms of Service do not exclude the renewed scanning of private messages.

Read further:
ArsTechnica: Suit over Facebook's practice of scanning users' messages to go forward[16]
Reuters: Facebook must face lawsuit over scanning of users' messages: judge[17]
Bloomberg: Facebook fails to dismiss privacy case over messages[18]

4. GOOGLE SHUTS DOWN NEWS SERVICE IN SPAIN IN RESPONSE TO NEW LAW

Google decided to disable its News service in the Spanish jurisdiction on December 16, 2014 in response to a copyright law that was passed in October 2014 and becomes effective in January 2015. Under the new legislation, online news aggregators are required to pay Spanish publishers for the content they display. Moreover, Google not only shut down its News service in Spain, but also removed Spanish publishers from other country versions of its News aggregator. The implementation modalities of the new Spanish law are yet unclear and will be decided through a separate consultation process in 2015.

Read further:
Guardian: Google News says 'adiós' to Spain in row over publishing fees[19]
New York Times: Google news to shut down in Spain[20]
BBC: Google to shut Spanish news service[21]

5. NETHERLANDS COULD FINE GOOGLE FOR PRIVACY VIOLATIONS

The Dutch data protection authority CBP came to the conclusion that Google's Terms of Service and privacy policy adopted in 2012 violate the Dutch Data Protection Act. On December 15, 2014, CBP gave Google a deadline until February 2015 to modify its collection of user data. Google combines data from different services without "adequately informing the users in advance and without [...] asking for consent". In case of non-compliance, Google could be fined up to 15 million euros in the Dutch jurisdiction.

Read further:
Dutch Data Protection Authority: CBP issues sanction to Google for infringements privacy policy[22]
ZDNet: Google facing Ð15m Dutch fine over privacy changes[23]
Guardian: Google faces Ð15m fines over privacy breaches in Netherlands[24]

6. GOOGLE FINED IN BRAZIL FOR REFUSING TO COMPLY WITH DATA REQUEST

A federal Brazilian court fined[25] Google 200.000 USD for refusing to comply immediately with a court order to hand over data related to an investigation in Petrobas. Google argued that it would only hand over the email data in question if they received a proper US cooperation request, but eventually complied with the Brazilian order.

7. ISRAELI FACEBOOK USERS COULD SUE FACEBOOK IN LOCAL JURISDICTION

An Israeli Facebook user wanted to sue Facebook Inc. and Facebook Ireland Inc. in his local jurisdiction after his account was suspended. Although the Israeli Court for the District of Jerusalem quashed the lawsuit, it nevertheless stated[26] that cases involving Israeli users residing in Israel with accounts in Hebrew should be adjudicated under the Israeli jurisdiction, despite Facebook's Californian jurisdiction provision.

8. FACEBOOK'S PRIVACY POLICY INVESTIGATED IN DUTCH JURISDICTION

The Dutch data protection authority CBP opened a formal investigation[27] in Facebook's privacy policy after the social network updated it in November 2014. Facebook plans[28] to implement the policy in January 2015. CBP asked Facebook delay its new privacy policy until the end of the investigation.

9. FRENCH COURT FINES DAILYMOTION FOR SLOW CONTENT REMOVAL

The Paris Court of Appeals ordered[29] Dailymotion to pay 1.3 million euros in damages for not removing copyright protected videos fast enough after receiving notifications. The court however affirmed that Dailymotion has no obligation[30] to proactively monitor user-generated content.

10. PIRATE BAY MOVES TO MOLDOVA AFTER SWEDISH SERVER RAID

On December 9, 2014, the Swedish police raided the facilities[31] of a hosting company in Stockholm and seized servers which allegedly belonged to The Pirate Bay. The torrent site was offline for the first time. On December 21, 2014, the site moved[32] to a new server in Moldova, based on its IP-address.

11. GOOGLE COULD FACE LAWSUIT BY INDIAN GOVERNMENT OVER GOOGLE MAPS BORDERS

Survey of India (SOI), the official cartographic service of the Indian government, has filed a complaint[33] with the Indian police against Google Maps for wrongly depicting disputed territories, which is deemed an offense under Section 69A of the Information Technology Act of 2000. It is Google's policy[34] to depict such disputed territories according to the national laws in its local versions.

12. FRENCH COURT ORDERS ISPS TO BLOCK ACCESS TO THE PIRATE BAY

France has joined[35] the list of countries blocking the Pirate Bay after a Paris court ordered[36] the four major ISPs on December 4, 2014 to block access to the site itself, its main mirror or redirection sites, as well as proxies.

13. MICROSOFT FILES FRESH US APPEAL AGAINST HANDING OVER EMAILS STORED ON IRISH SERVERS

On December 8, 2015 Microsoft filed[37] an appeal against a US warrant requiring it to hand over customer emails stored in a Dublin data center, arguing that this would constitute inappropriate extra-territorial search[38]. Several amicus briefs[39] were submitted from major tech companies[40], civil society groups[41] and the Irish government[42].

14. PAKISTAN MAINTAINS BAN OF YOUTUBE

After briefly reopening access to YouTube, Pakistani authorities have restored[43] the ban established in 2012 after the posting of the "Innocence of Muslims" video, justifying the measure by the receipt of numerous complaints. A parallel trial in the US[44] addresses the removal of the video on copyright grounds.

15. IRAN TO DEPLOY NEW "SMART" INTERNET FILTERING

Iran experiments[45] with new filtering techniques to selectively prevent access to "criminal and unethical" content, which would potentially allow for the removal of the current blanket ban on entire platforms. A trial under way (allegedly on Instagram) could lead to a full deployment in June 2015.

16. FACEBOOK AND TWITTER REFUSE TO BLOCK PAGES FOR NAVALNY PROTEST IN RUSSIA

In spite of requests by the Russian regulator, Facebook and Twitter have decided not to block[46] the pages related to the demonstration planned by regime critic Alexei Navalny for January 15, 2015. The US-based platforms might risk being blocked in the Russian jurisdiction as a result.

17. AUSTRALIAN ISPS REQUESTED TO DEVELOP A CODE OF CONDUCT FOR COPYRIGHT INFRINGEMENTS

After a consultation process, the Australian Government gave[47] ISPs until April 2015 to develop a code of conduct[48] to notify customers about copyright infringements and define sharing of related costs with rightsholders. Rightsholders would obtain customers' details for action after an agreed number of notices are sent. Copyright law will be amended to allow courts to order the blocking of foreign websites[49] that can be shown to be primarily devoted to copyright infringement.

18. GITHUB STARTS BLOCKING SUICIDE CONTENT IN RUSSIAN JURISDICTION

After being blocked in Russia[50] because of pages referring to methods to commit suicide, GitHub started geo-blocking[51] such content in the Russian territory, citing its Terms of Service that forbid violating the laws of the jurisdiction of the user. It also established a repository[52] to publicly post requests received from Russian authorities.

19. CHAOS COMPUTER CLUB SITES BLOCKED BY BRITISH ISP FILTERS

The sites of the Chaos Computer Club and its annual conference became inaccessible[53] to many UK citizens after their likely inclusion in the opt-out Internet filtering system established by ISPs since 2013. Created at the request of the government to enable blocking of content unsuitable for minors or deemed objectionable, its scope has progressively been expanded, raising concerns of overblocking[54].

20. CHINA TO FINE 11 INTERNET COMPANIES FOR SPREADING PORNOGRAPHY AND VIOLENCE

China's Ministry of Culture has announced[55] it will fine Tencent, Baidu and nine other companies as part of a broad anti-pornographic campaign launched in April 2014, asking these "major companies to shoulder their social responsibility".

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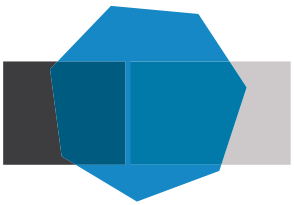

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ABOUT

The Internet & Jurisdiction Project facilitates a global multi-stakeholder dialogue process to address the tension between the cross-border nature of the Internet and geographically defined national jurisdictions. It provides a neutral platform for states, business, civil society and international organisations to discuss the elaboration of a transnational due process framework to handle the digital coexistence of diverse national laws in shared cross-border online spaces.

INTERNET & JURISDICTION OBSERVATORY

The members of the Internet & Jurisdiction Observatory network provide expert input into the global multi-stakeholder dialogue process and help the Internet & Jurisdiction Project to detect trends related to the tension between the cross-border nature of the Internet and national jurisdictions around the world. Based on a progressive crowd-based filtering process, they identify the most relevant cases. This ranking is the backbone of the Internet & Jurisdiction Retrospect, our monthly newsletter that informs the different stakeholders who participate in the ongoing dialogue process about emerging trends.

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